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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Secretary-General on civil defence forces submitted pursuant to Commission on Human Rights resolution 1992/57

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Introduction

1. At its forty-eighth session, the Commission on Human Rights adopted resolution 1992/57, entitled "Civil defence forces". From that resolution the Commission noting with interest the observations on the matter of civil defence forces contained in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18 and Corr.1) and the apparent increase in such forces throughout the world, particularly in areas of conflict, recognizing that action by such forces had in some cases jeopardized the enjoyment of human rights and fundamental freedoms and that, under exceptional circumstances, when public forces were unable to act owing to the exigencies of situations, there might be a need for the establishment of civil defence forces to protect the civilian population, reaffirming the human rights obligations of States under the Charter of the United Nations and realizing that the individual has a responsibility to strive for the promotion and observance of the rights recognized in the International Covenants on human rights, requested the Secretary-General to seek information from Governments, intergovernmental organizations and non-governmental organizations concerning domestic law and practice relating to civil defence forces and comments concerning the relationship between such forces and human rights. The Commission also requested the Secretary-General to prepare a summary of the information and comments received and to present that summary to the Commission on Human Rights at its forty-ninth session.

2. In connection with resolution 1992/57, and as noted therein, the Secretary-General wishes to draw attention to the consideration of this question by the Working Group on Enforced or Involuntary Disappearances as contained in the following reports of the Working Group: E/CN.4/1992/18, at paragraphs 378 to 381; E/CN.4/1992/18/Add.1 (concerning disappearances in Sri Lanka), at paragraphs 79, 80, 110 to 114 and 204 (m); and E/CN.4/1991/Add.1 (concerning disappearances in the Philippines), at paragraphs 25, 29, 30, 41 to 49, 126, 163 to 165 and 168 (b) and (d).

3. In accordance with the requests of the Commission, the Secretary-General addressed himself, by notes verbales dated 24 July 1992 and by letters of the same date, respectively to all Member States of the United Nations and to the following intergovernmental organizations: the Association of South-East Asian Nations, the Commission of the European Communities, the Council of Europe, the European Parliament, the League of Arab States, the Organization of African Unity, the Organization of American States, the International Organization for Migration and the International Criminal Police Organization (INTERPOL). The Secretary-General also addressed himself directly to relevant subsidiary bodies of certain of the aforementioned intergovernmental organizations. Similarly, on 24 July 1992, letters were sent to a wide selection of non-governmental organizations.

4. To date, the Secretary-General has received responses from the following Member States of the United Nations: Austria, Bahrain, Brazil, Chile, Croatia, Denmark, Egypt, Finland, Guyana, Jamaica, Kazakstan, Kyrgyzstan, Liechtenstein, Malta, Slovenia, Spain, the Syrian Arab Republic, and Trinidad and Tobago. With respect to intergovernmental organizations, the Secretary-General has received responses from the International Criminal Police Organization and the Organization of American States. Responses were

also received from Amnesty International, Human Rights Advocates and the International Institute of Humanitarian Law.

SUMMARY OF RESPONSES RECEIVED BY THE SECRETARY-GENERAL

A. Responses received from Member States of the United Nations

5. The responses received from the Member States of the United Nations may be divided into three groups: (i) those which reported having no information or no such forces; (ii) those which reported having no such forces, but reported on some related legislation; and (iii) those which reported having no such forces, but reported on legislation relating to public emergencies and natural disasters affecting the civilian population. In summarizing these responses, it is pertinent to note that there was a relatively small number of responses (18) from Member States and not all addressed the exact subject of the inquiry.

6. With respect to the first group noted above, the Principality of Liechtenstein reported that it had "no information or observations to present" on the subject, while Austria and Kyrgyzstan reported that they neither had civil defence forces (of the kind described in resolution 1992/57) nor, therefore, did they have provisions in domestic law relating to such forces. Jamaica and Malta reported that they had no special law dealing with the subject. Kazakstan also reported that it had no such law at present, but informed the Secretary-General that it was in the process of developing such a law.

7. With respect to the second group noted above, Guyana and Trinidad and Tobago reported that they had no such forces, but each drew the attention of the Secretary-General to legal institutions which are said to directly relate to the subject. Guyana reported on the competence of the Guyana Police Force (according to the Police Act, Chapter 16:01, Part 11, Article 3) and the competence of the Guyana Defence Force (according to the Defence Act, Chapter 15:01, Part 1, Article 5). Trinidad and Tobago reported that the Defence Act of Trinidad and Tobago (Chapter 14:01) "establishes a Defence Force which is subject to military law, and provides for the defence of the country against an enemy" while the Special Reserve Police Act (Chapter 15:03) establishes forces which "may be called upon to serve in cases of actual aggression or internal disturbance". According to the latter Act (the text of which was supplied in its entirety), the Commissioner of Police "may, whenever additional police may be required for the preservation of good order, the protection of persons or property or the performance of any other duty exercisable by members of the Police Service, call out members of the Special Reserve Police" (section 4 (2)). In this connection, it is to be noted that: the Commissioner of Police and his forces serve under ministerial command (section 6); the powers of members of the Special Reserve Police on duty are restricted to those stipulated in the regular Police Service Act; and members of the Special Reserve Police who commit any proscribed act shall be subject to disciplinary punishments (section 5). The Government of Trinidad and Tobago also pointed out that both the Defence Force and the Special Reserve Police Force are subject to the provisions of the Constitution of Trinidad and Tobago, with Section 4 (pertaining to the fundamental rights and freedoms of the citizenry), Section 5 (prohibiting any law abrogating, abridging or

infringing prescribed fundamental rights and freedoms) and Section 14 (securing a procedural right to remedy for infringement of fundamental rights and freedoms) holding particular relevance in this regard.

8. In a similar fashion to the responses of Guyana and Trinidad and Tobago, but without expressly stating that no such civil defence forces exist as referred to in resolution 1992/57, the Government of Brazil drew the Secretary-General's attention to Chapter III of Brazil's 1988 Federal constitution which stipulates that public security activities can only be performed by the State through the competent authorities. Pursuant to this constitutional prescription, law enforcement and public security are said to be regulated by specific governmental decrees which, in the case of police forces, "have corrective instances aimed at monitoring their activities and, when necessary, punishing abuses of their agents in the discharge of duties". Further, viewed in the context of constitutional provisions prescribing a democratic State under the rule of law and respecting the "human being's dignity" (Article 1 of the Federal Constitution), and given the constitutional proscription of "armed groups action, either civil or military, against the constitutional order and the democratic State" (Article 5, Chapter I, para. XLIV of the Constitution), the Government of Brazil concludes that the "mere existence of such paramilitary forces is, therefore, regarded as a serious threat to the fulfilment of human rights and to the democratic State itself".

9. With respect to the third group noted above, Bahrain, Chile, Croatia, Denmark, Egypt, Finland, Spain and the Syrian Arab Republic reported that they had no such civil defence forces as referred to in resolution 1992/57, but reported on legislation relating to civil forces organized (or to be organized) in response to states of emergency such as wars and natural disasters affecting the civilian population on a significant scale. In connection with the latter, the following legislation was cited:

Bahrain: Legislative Decree No. 5 of 1990;

Chile: Law No. 8,059 of 16 February 1945 and Supreme Decree No. 1,250 of 4 July 1947;

Croatia: Civil Defence Law;

Denmark: Danish Civil Defence Act of 1949, and the Danish Civil Defence Act of July 1982, as amended;

Egypt: Civil Defence Act No. 148 of 1959, as amended by Acts Nos. 10 of 1965, 175 of 1981 and 107 of 1982, together with the relevant implementing regulations;

Finland: Civil Defence Act based on Article 75 of the Constitution Act of Finland;

Spain: Law 2/1985, of 21 January, concerning Civil Protection, and Royal Decree 409/1992 of 24 April;

Syrian Arab Republic:	Civil Defence Act No. 148 of 1959, together with "the regulations concerning self-defence at institutions in the Syrian Arab Republic as promulgated by the Prime Minister's Office in 1982".

10. Reflecting the common nature of the responses referred to above, the Government of Bahrain reported, in part, as follows:

> "In Bahrain Civil Defence is based upon the concept, common in the region, of community cooperation in disaster control such as fire fighting, maintenance of essential services, supply of food, water, shelter, medical supplies and so on.
>
> "Although Police and regular Armed Forces have obvious roles to play in Civil Defence cooperation, nevertheless Civil Defence responsibilities in Bahrain do not involve direct Military or Security operations as such."

11. In keeping with this description, the Governments of Croatia, Finland and the Syrian Arab Republic explicitly stated that forces organized in accordance with their legislation in this area are unarmed. The Government of Spain went further in advising that, under Spanish law, the concept of a "civil defence force ... neither exists nor can exist" (emphasis in the original).

B. Responses received from intergovernmental organizations

12. Responses were received from INTERPOL OAS. While the former advised that it had no information or comments to submit, the latter forwarded the Secretary-General's letter of 24 July 1992 to the Inter-American Commission on Human Rights which responded by submitting a copy of its 1991 Annual Report.

13. In submitting that document, the Inter-American Commission on Human Rights drew the Secretary-General's attention to Chapter III ("Reports on Individual Cases"), Chapter IV ("Situation of Human Rights in Several States") and Chapter V ("Areas in which Steps Need to Be Taken Towards Full Observance of the Human Rights Set Forth in the American Declaration of the Rights and Duties of Man and the American Convention of Human Rights"). However, beyond the general references contained within the section entitled "Groups of Armed Irregulars and Human Rights" (section II of Chapter V), there was no explicit or specific treatment of the problem of civil defence forces as understood in relation to Commission resolution 1992/57. Indeed, while the report of the Inter-American Commission on Human Rights acknowledged that there is "a very complex picture" relating to situations of armed irregulars (p. 504), and in so far as the General Assembly of the Organization of American States has adopted a resolution (AG/RES. 1043 (XX-0/90)) responding to "the increase in indiscriminate and selective violence perpetrated by irregular armed groups in some states of the hemisphere", the concern of the OAS and the Inter-American Commission centres on the actions of non-governmental entities "engaged in common crime whose illicit activities have enabled them to arm themselves with everything they need to take on the State's security forces" (p. 504). These activities are said to take place in the context of acts of terrorism perpetrated by insurgent groups or, for example, drug traffickers (pp. 508-514). Acts perpetrated by locally organized armed forces charged

with the defence of their communities, i.e. acting under the direction of governmental authorities and, presumably, law, are not addressed.

C. Responses received from non-governmental organizations

1. Response received from Amnesty International

14. The response of Amnesty International drew attention to references relating to the use of civil defence forces in 18 recent (1991 and 1992) reports concerning the following 10 countries: Bangladesh, Bosnia and Herzegovina, Colombia, Guatemala, Haiti, Peru, the Philippines, Sri Lanka, Turkey and the former Yugoslavia.

15. The following civil defence forces, of the kind mentioned in Commission resolution 1992/57, were specifically referred to in the Amnesty International reports:

Bangladesh:	the Village Defence Party, the "paramilitary Ansars", and the "paramilitary Bangladesh Rifles" (see AI INDEX: ASA 13/04/92 of May 1992 at page 3);
Colombia:	unnamed "paramilitary forces" and "self-defence" groups located in various specified regions and whose "leaders reportedly claim to be operating with the consent and support of regional army commanders and civilian authorities" (see AI INDEX: AMR 23/69/91 of December 1991 at page 15);
Bosnia and Herzegovina:	"a variety of paramilitary groups fighting on both sides", including *inter alia* the Serbian "Arkan", "Croatian paramilitaries, members of the HOS (Croatian Defence Forces)", the so-called Serbian "*Cetniks*", the so-called Croatian "*Ustasa*", and the so-called "Muslim fundamentalists" (see AI INDEX: EUR 63/01/92 of October 1992 at pages 7-10);
Guatemala:	*Patrullas de Autodefensa Civil* (PAC - Civil Self-Defence Patrols), described as "civilian auxiliaries of the Guatemalan armed forces" (see AI INDEX: AMR 34/20/92 of May 1992 at page 3, note 2), and "uniformed private policemen" said to "operate under licence from the National Police and the Ministry of the Interior" (see AI INDEX: AMR 34/24/91 of June 1991 at page 2);
Peru:	*Montoneros, rondas de defensa civil or rondas campesinas* (civil defence patrols) serving Civil Defence Committees reportedly under "political-military" command (see AI INDEX: AMR 46/56/91 of November 1991 at pages 21-22);

Philippines:	the former "paramilitary" Philippine Constabulary, the "official paramilitary auxiliary" Citizens' Armed Forces Geographical Units (CAFGUs) and Special CAFGU Active Auxiliaries (SCAAs), Civilian Self-Defence Organizations (CVOs) and "various semi-official 'vigilante' groups operating with the support or acquiescence of military commanders" such as *KADRE* and the "*Alsa Masa*" (see AI INDEX: ASA 35/05/91 of February 1991 at pages 6-7, AI INDEX: ASA 35/16/91 of June 1991 at pages 7-12, and AI INDEX: ASA 35/01/92 of February 1992 at pages 19-22);
Sri Lanka:	the "Muslim home guards" organized pursuant to the Mobilisation and Supplementary Forces Act, 1985, which is said to provide for "the establishment of a National Auxiliary Force, the Home Guards and a Civil Defence Force" (see AI INDEX: ASA 37/10/92 of June 1992 at pages 1-2);
Turkey:	"village guards" which are described as "a paramilitary force set up to act as a local militia against the PKK" (see AI INDEX: EUR 44/66/92 of August 1992 at page 1; the PKK is the Kurdish Workers' Party);
(former) *Yugoslavia*:	"paramilitary forces", "local armed formations", "*Ustasa*", "*Cetniks*", "Serbian paramilitaries operating with, or in the wake of, the Yugoslav National Army (JNA)", "Croatian paramilitaries", "Serbian paramilitary forces, led by several (named) local Serbs from Lovas and Tovarnik", the "White Eagles", and "Arkan's men" (see, throughout, AI INDEX: EUR 48/26/91 of November 1991 and AI INDEX: EUR 48/13/92 of March 1992).

16. In evaluating the human rights violations allegedly committed by these forces in the various countries, Amnesty International frequently observed the importance of maintaining government control, with proper command structures, and made reference to the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

2. Response received from Human Rights Advocates

17. The response received from Human Rights Advocates addresses the problem of civil defence forces in Guatemala. The 41 page submission is divided into four sections, the first three of which address, successively, "the 'need' for civil defence forces in Guatemala", "Guatemalan domestic law relating to civil defence forces", and how "Guatemalan civil defence forces jeopardize the enjoyment of human rights and fundamental freedoms". Conclusions are offered

in a fourth section. A brief preface to the submission cites the existence of the Civilian Self-Defence Patrols, Civil Patrols or "PACs" (as they are known by their Spanish initials) in Guatemala as giving rise to the report.

18. In examining the "need" for civil defence forces in Guatemala, Human Rights Advocates notes that the Government of Guatemala created the Civil Patrols by decree in an effort to restore law and order during what it characterized as exceptional circumstances in mid-1982. Specifically, the Civil Patrol system is said to have "the purported goal of combating anti-government guerillas" (p. 2). However, Human Rights Advocates assert that the patrols have been "ineffective in ensuring the safety of the rural population" (p. 3) and, moreover, the state of emergency under which the patrols were created came to an end in 1983. Further, in noting that the number of guerillas in the country has diminished considerably, while hundreds of thousands of patrollers remain, it is argued that "there is ample evidence that the Patrols are no longer necessary, if indeed they ever were" (p. 4).

19. In the second section of its submission, Human Rights Advocates adjust their earlier statement to note that the Civil Patrols were created "not by formal decree or law, but by military edict of General Rios Montt", then President of the Republic (p. 5). Some years later, the Government of Oscar Mejía Victores is reported to have "issued a formal decree, Decree 19-86, which attempted to provide a legal basis for the Civil Patrol system" (ibid.). Described in the Decree as a "voluntary" force "of eminently civil disposition", article 1 of the Decree nevertheless places them under the coordination of the Ministry of Defence. Irrespective of the alleged conceptual shortcomings of the Decree, it is also noted that, according to Article 7, the implementation of the law was to be accompanied by the issuance of regulations within 60 days of the Decree's promulgation – a legal obligation which has reportedly never been fulfilled by the authorities (p. 6). On one specific aspect relating to the formation of Civil Patrols, it is observed that conscription or any obligatory service in the Civil Patrols would violate article 34 of the 1986 Constitution of Guatemala. However, Human Rights Advocates argues that the "truth is that service is forced by way of threats, intimidation, and other extrajudicial sanctions" (p. 7).

20. Section III of the submission, constituting the largest part of the report and running some 32 pages, recounts a variety of alleged abuses of human rights attributed to the Civil Patrols of Guatemala. In reviewing the alleged violations, the section is divided into six subsections addressing, in order, the following issues: A. The rights to life, liberty, security of the person, and freedom from torture; B. The rights to freedom from slavery, servitude, compulsory labour, and forced assimilation; C. Freedom of thought, conscience, religion, and opinion; D. The right to equality, freedom from discrimination, and equal access to the judicial system; E. The right to freedom of movement; and F. Special protection of children. While numerous types, methods and instances of alleged violations are recounted through the pages, by far the largest number of such violations is found under the first two subsections.

21. In its conclusions, Human Rights Advocates make the determination that "the Guatemalan Civil Patrols systematically violate not only domestic law, but also many of the basic human rights guaranteed to all people" (p. 40). In

this connection, Human Rights Advocates cite the Commission on Human Rights report rendered by the independent expert, Mr. Christian Tomuschat, which concludes that "the civilian self-defence patrols should be abolished forthwith" (E/CN.4/1992/5, para. 193). Human Rights Advocates call upon the Commission on Human Rights to "do everything possible to hasten the abolition of the Guatemalan Civil Patrols" (p. 41).

3. Response received from the International Institute of Humanitarian Law

22. The International Institute of Humanitarian Law, located at San Remo, Italy, reported on a seminar, it had held in April 1990 in cooperation with the Italian Red Cross. Judging from the Introductory Report and Summary of Conclusions from the international seminar entitled "Protection of Human Life and Civil Defence", the essential subject and concern of the seminar related to "dangers to human life caused by extraordinary events, various types of disasters, both man-made and caused by natural forces". The seminar, however, did not consider the specific problem of civil defence forces in the sense of resolution 1992/57.

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Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the Commission on Human Rights the attached study which was prepared pursuant to Commission resolution 1992/73 of 5 March 1992

ANNEX

Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73

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I. INTRODUCTION

1. The analytical report of the Secretary-General on internally displaced persons, submitted to the Commission on Human Rights at its forty-eighth session, stated that 24 million people, largely women and children, were estimated to be displaced within the borders of their own countries, while the refugee population was estimated at 17 million (E/CN.4/1992/23, para. 5). Armed conflict, forced relocation, communal violence, natural and ecological disasters, systematic violations of human rights, as well as traditionally recognized sources of persecution combine to produce these massive involuntary movements within State borders. Vulnerable and unable to find places of safety, the internally displaced often suffer persistent violations of basic human rights and their humanitarian needs go unmet.

2. The response of the international community to the problems faced by the internally displaced must be viewed in the larger context of the post-cold war era in which long-suppressed ethnic and religious conflicts have been unleashed in many parts of the world. At the same time, there is a greater willingness on the part of the international community to address these problems and to try to develop for the internally displaced standards and mechanisms comparable to those that assist and protect refugees. How to make available to the internally displaced the protection and assistance afforded refugees without interfering with the traditional protections established by the refugee regime, namely, the right to leave a country and seek asylum, is one of the more daunting challenges of the post-cold war era.

3. The crisis of the internally displaced from the perspective of the international community is that they fall within the domestic jurisdiction and are therefore not covered by the protection normally accorded those who cross international borders and become refugees. International responses to emergencies involving them have in some circumstances been undertaken by agencies like UNHCR or UNICEF, but in the absence of clear mandates and an international body with special responsibility for the protection of internally displaced persons, the international response has been ad hoc, limited and unsatisfactory. Growing international concern resulted in the appointment by the Secretary-General in 1991 of an Emergency Relief Coordinator to improve the provision of relief and assistance to those caught up in humanitarian emergencies. In the same year, the Commission on Human Rights addressed the protection dimension of internal displacement (res. 1991/25). The mandate behind the present study underlines the importance being given to the role human rights bodies might play in increasing protection for the internally displaced.

A. International concern

4. The first United Nations initiative to raise the question of institutionalized assistance to internally displaced persons was launched by the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), held at Oslo in August 1988. The 1989 International Conference on Central American Refugees (CIREFCA), held in Guatemala, also focused attention on the plight of the internally displaced. The Economic and Social Council was seized with the issue a year later, adopting resolution 1990/78 of 27 July 1990 in which it requested the

Secretary-General "to initiate a system-wide review to assess the experience and capacity of various organizations, in the coordination of assistance to all refugees, displaced persons and returnees, and the full spectrum of their needs" and, on the basis of such a review, "to recommend ways of maximizing cooperation and coordination among the various organizations of the United Nations system" in responding to the problems of refugees, displaced persons and returnees.

5. The Commission on Human Rights, in its resolution 1991/25 of 5 March 1991, requested the Secretary-General to take into account the protection of human rights and the needs of internally displaced persons in the system-wide review, and to submit to the Commission at its forty-eighth session "an analytical report on internally displaced persons, based on information submitted by Governments, the specialized agencies, relevant United Nations organs, regional and intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations."

6. A report on refugees, displaced persons and returnees was prepared by a consultant, Mr. Jacques Cuénod, and submitted to the Economic and Social Council at its second regular session of 1991 (E/1991/109/Add.1). The report analyses the roles played by various United Nations entities in providing assistance and protection to refugees, displaced persons and returnees, as well as the contribution of other intergovernmental and non-governmental organizations. It points out the important contribution being made by intergovernmental bodies that manage to assist and protect internally displaced persons, notwithstanding their mandates which either do not explicitly allow them to provide protection and assistance to the internally displaced or to do so only on an ad hoc basis. In particular, it describes the role of UNHCR, other United Nations agencies and the ICRC in assisting and protecting the internally displaced persons. The report concludes, however, that "within the United Nations system there is no entity entrusted with the responsibility of ensuring that aid is provided to needy internally displaced persons. Material assistance to this group has been provided on an ad hoc basis" (para. 117).

7. Accordingly, the Cuénod report expresses the view that the protection of the human rights of internally displaced persons will require the greater involvement of United Nations human rights bodies. In particular, it suggests that the Commission on Human Rights might wish to consider creating mechanisms for dealing with the human rights aspects of internally displaced persons. This would enable the Commission "to deal with existing problems in this area with the necessary degree of urgency and in a concrete manner, bringing them to the attention of the international community and trying to generate the cooperation of all interested and concerned Governments" (para. 51).

8. Pursuant to Commission resolution 1991/25, the Secretary-General on 28 June 1991 addressed a note verbale to all Governments and letters to relevant organizations, requesting information and views on the subject. In reply to those communications, information was submitted by 34 Governments and intergovernmental and non-governmental organizations. The Secretary-General prepared the analytical report on the basis of the information received from these sources. The report covered the causes and consequences of displacement and the human rights standards and international mechanisms for providing

protection and assistance to displaced persons. After reviewing international mechanisms for protecting the human rights of displaced persons, the report concluded: "If the massive displacement of persons requires the mobilization of all competent parts of the United Nations system, as suggested by the Cuénod report, protection of the human rights of internally displaced persons requires greater involvement of the United Nations human rights system" (para. 109).

B. Mandate and methodology

9. The mandate of the Representative of the Secretary-General on internally displaced persons derives from resolution 1992/73 of 5 March 1992 of the Commission on Human Rights, approved by the Economic and Social Council in its decision 1992/243 of 20 July 1992. The Commission, "deeply disturbed by the serious problem that the large number of internally displaced persons throughout the world and their suffering is creating for the international community", recognized "that internally displaced persons are in need of relief assistance and of protection".

10. Taking note of the analytical report, the Commission requested the Secretary-General "to designate a representative to seek again views and information from all Governments on the human rights issues related to internally displaced persons, including an examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to internally displaced persons." The Commission encouraged the Secretary-General "to seek also views and information from the specialized agencies, relevant United Nations organs, regional intergovernmental and non-governmental organizations and experts in all regions on these issues".

11. The Commission requested the Secretary-General "to submit a comprehensive study to the Commission at its forty-ninth session, identifying existing laws and mechanisms for the protection of internally displaced persons, possible additional measures to strengthen implementation of these laws and mechanisms, and alternatives for addressing protection needs not adequately covered by existing instruments." The Commission also decided "to continue its consideration of the question at its forty-ninth session".

12. Resolution 1992/73 appears to ask the Secretary-General and his Representative to perform two separate sets of functions, both with respect to information-gathering and the preparation of the report. His Representative was asked to seek views and information from all Governments while the Secretary-General was requested to seek the same from the specialized agencies, relevant United Nations organs and other pertinent sources. He was also requested to "submit" a "comprehensive" study to the Commission. In consultation with the Secretariat and others knowledgeable about the background to the Commission's consideration of the item, it was agreed that the Secretary-General and his Representative could not have been intended to operate separately; that the same request for views and information was meant to go to Governments and all the other sources specified in the resolution; that only one study was to be prepared from the information received and that the Representative of the Secretary-General was to perform all those

functions, including the preparation of the study, which the Secretary-General would then submit to the Commission as the work of his Representative on the human rights issues related to internally displaced persons.

13. In accordance with his mandate, thus interpreted, the Representative of the Secretary-General formulated and sent a questionnaire to all Governments, organizations and agencies specified in the resolution, requesting information on the pertinent themes of the stipulated study, drawing attention to the analytical report and in particular to a number of issues. In his letter, the Representative of the Secretary-General, echoing the words of the Under-Secretary-General for Human Rights in his letter conveying the appointment and the terms of the mandate, wrote:

> "I am sure that you will agree that protecting the human rights of displaced persons is one of the most critical challenges facing the international community today, affecting hundreds of thousands of persons in Africa, Asia, Europe and Latin America. It is a problem which has only recently begun to be addressed, and the study requested by the Commission on Human Rights can be expected to make an important contribution to determining the legal and policy approaches which will be adopted by the United Nations in this regard."

14. In order to be able to fulfil the reporting obligation of the Secretary-General under the resolution, 15 October 1992 was set as the target date for receiving replies to the questionnaire. At the time of writing - mid-December 1992 - replies had been received from 16 Governments: Argentina, Armenia, Austria, China, Cyprus, Egypt, Estonia, Guatemala, Hong Kong, Jordan, Kyrgyzstan, Norway, Pakistan, Rwanda, Switzerland and the United States of America*. Within the United Nations system, replies were received from the Department of Humanitarian Affairs (DHA), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the United Nations Conference on Environment and Development (UNCED), the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the World Bank and the International Fund for Agricultural Development (IFAD). A reply was also received from the International Organization for Migration (IOM). One regional organization, the Interamerican Institute for Human Rights (IIHR), responded. The non-governmental organizations that responded were Caritas Internationalis, Friends World Committee for Consultation, International Catholic Migration Commission, Japanese Association to Help Chernobyl, Lawyers Committee for Human Rights, Refugee Policy Group, United States Committee for Refugees, Unrepresented Nations and Peoples, and Commission of the Churches on International Affairs of the World Council of Churches. The International Committee of the Red Cross also sent a reply.

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* Replies from Colombia and Latin America were received after the deadline and were therefore not included.

15. In addition to soliciting responses to the questionnaire, the Representative held consultations with the Secretary-General and senior United Nations Officials, representatives of various permanent missions in Geneva, representatives of UNHCR, IOM and ICRC and a number of non-governmental organizations including Friends World Committee for Consultation, the Commission of the Churches on International Affairs of the World Council of Churches, International Save the Children Alliance, International Federation of Red Cross and Red Crescent Societies, and Médecins Sans Frontières.

16. The Representative also consulted with legal scholars from the Harvard Law School Human Rights Program and the Yale Law School Schell Center for Human Rights, and with experts from the Brookings Institution and the Refugee Policy Group, both of whom provided valuable support and organized special working groups for further consultations. He also benefited considerably from the substantive contribution made by staff members at the Centre for Human Rights.

17. To give a practical dimension to the study, the Representative of the Secretary-General undertook on-site visits to a select number of countries with a special interest in the problem or where internal displacement was or threatened to become particularly pronounced. These included the former Yugoslavia, the Russian Federation, Somalia, the Sudan and El Salvador, in that order. The visit to the former Yugoslavia was undertaken in accordance with the mandate contained in resolution 1992/S-1/1 of 14 August 1992 in which the Commission on Human Rights appointed a Special Rapporteur on the human rights situation in the former Yugoslavia and called upon "existing mechanisms" of the Commission, including the Representative of the Secretary-General on internally displaced persons, to provide cooperation and assistance to the Special Rapporteur and to accompany him in visiting the former Yugoslavia, if he so requested. The initiative for the visit to the Russian Federation emanated from consultations with the representative of that Government to the Commission and underscored the global character of the problem of displacement. Somalia and the Sudan represented countries with severe displacement problems, while El Salvador, whose Government had cooperated with the United Nations in the achievement and consolidation of peace and reconstruction, represented possible solutions to the problems of displacement.

18. It must be emphasized that the purpose of these visits was not to monitor and report on conditions in those countries, but rather to exchange views with the government authorities on the mandate and the issues involved and to acquire some on-the-ground insight into the problems of internal displacement as a generic crisis of global concern.

19. In the countries visited, extensive consultations were conducted with the national leadership, local NGOs, members of the internally displaced communities and minority groups, representatives of United Nations bodies and other intergovernmental and non-governmental organizations, and, of course, with the masses of the displaced population in camps or dwellings around urban centres or in rural settlements.

C. Perceptions of the mandate

20. In the course of carrying out his mandate, the Representative of the Secretary-General encountered a certain number of issues which demonstrated the gaps in the United Nations system in so far as responsibility for internally displaced persons is concerned and, therefore, the importance of the Commission's initiative in this area. Among these issues are the scope of the mandate, the alternative models from which the Commission might choose a mechanism for its future work in this area, and the need for a comprehensive, multi-faceted approach to the problems of the internally displaced.

21. Many responses assumed that the mandate covered all aspects of the problems of internally displaced persons and the institutional mechanism for their protection and assistance within the United Nations system. While some focused on the kind of mechanism that would be most appropriate for the Commission on Human Rights, others discussed the broader problem of the lack of a comprehensive mandate on the internally displaced within the United Nations system and suggested remedies ranging from creating a new institution for the protection of the internally displaced modelled along the lines of UNHCR to extending the mandates of UNHCR and DHA to cover the internally displaced.

22. In consulting with the Secretariat on this issue, the Representative of the Secretary-General was advised that the study was intended to focus on what could be done within the framework of the Commission's special procedures and mechanisms to provide more protection for the human rights of the internally displaced. Consequently, any ideas for United Nations action which would go beyond this framework might be useful by-products of the study, but could not be considered by the Commission as a basis for possible action on the matter.

23. The arrangements suggested in this study have therefore been conceived largely, if not entirely, within the framework of the Commission on Human Rights, rather than in the light of the more ambitious perspectives and expectations of some of the responses. It is hoped, however, that the broad lines of the institutional arrangements set out in the report will provide a basis for speculating or even acting on measures that could more effectively meet the broader challenge of protection for the internally displaced. Meanwhile, the practical approach would be to build on the existing institutional arrangements and stimulate a more active awareness and contribution of human and material resources towards an effective system of international assistance and protection for the internally displaced.

II. OVERVIEW OF INTERNAL DISPLACEMENT

24. The severity and pervasiveness of the problem of internal displacement have been well reflected in the analytical report of the Secretary-General. As the present study is essentially a follow-up to that report, it is not necessary to repeat the evidence it provided on the scale of internal displacement. In order to sharpen perspectives on the problem, however, it may be useful to provide a brief overview focusing on the causes and consequences of internal displacement and criteria for identifying the affected population.

A. Causes and consequences

25. The analytical report of the Secretary-General on internally displaced persons identified six causes of displacement: armed conflict and internal strife, forced relocation, communal violence, natural disasters, ecological disasters, and the systematic violation of human rights. Information received by the Representative of the Secretary-General tends to confirm this.

26. Armed conflict, with the resulting violations of human rights, is by far the most pervasive cause of internal displacement. The replies of Egypt and Rwanda and those of DHA, WFP, ICRC, IIHR and several NGOs all pointed to armed conflict as the leading antecedent to displacement. Often, mass dislocation occurs as groups seek to escape from physical danger and search for security and reliable sources of survival. However, displacement is sometimes the result of strategic or tactical policies of the parties to the armed conflict.

27. A report submitted by the Refugee Policy Group (RPG) notes that in Africa, where an estimated 15 million persons are internally displaced, the most prevalent cause of internal displacement is civil war. Other causes are "a breakdown in civil order, ethnic strife, forced resettlement, and demobilization". Among the serious human rights violations that occur are deliberate starvation of the civilian population, forced labour, forcible conscription into governmental or rebel armies, and killings by high-intensity weapons and land mines. In the case of forced resettlement, RPG's report points out that while "some forced relocations occur during civil wars as a way of pacifying areas that may otherwise side with one or another party to the conflict", others "occur when a government tries to control a minority group or political opposition by removing its members from their traditional habitats". RPG also draws special attention to demobilization as an increasing cause of displacement: "As solutions are found to more and more regional and internal conflicts, the need to reintegrate what may be hundreds of thousands of military personnel is presenting a major dilemma. Many of these demobilized soldiers are, in effect, internally displaced, in that they may no longer have homes to which they can return".

28. Another category of internally displaced persons to which RPG draws attention is that of returning refugees who "are unable to reintegrate into their former villages or towns". In some cases, it is noted, the refugees have returned to their home countries "not because of improved conditions there, but because of deteriorating conditions in the country of asylum". In particular, Somali and Sudanese refugees who returned to their countries under such circumstances, "often found it impossible to go back to their home communities because of the fighting in these areas. They then become internally displaced persons".

29. Several replies, such as those from DHA, ICRC and IIDH, emphasized violations of human rights and humanitarian law as causes of displacement. IFAD cited communal violence as a cause of internal displacement, such as the disturbances that occurred in Mauritania and Senegal in 1979. The replies of Cyprus, Egypt, and Jordan indicate that foreign aggression or occupation of part of the national territory also should be recognized as a cause of internal displacement. These countries, along with Norway, DHA, and IIDH, also argue that natural disasters are another cause of displacement. The

report of IIDH draws attention to the fact that displacement may be caused by the activities of drug-traffickers (as in Colombia) and non-governmental armed groups (as in Peru). However, little information was received concerning displacement caused by such factors as nuclear or chemical disasters. On the other hand, the Japanese Association to Help Chernobyl drew attention to the need to resettle the victims of nuclear disaster around the world.

30. The analytical report discussed the consequences of internal displacement in terms of the human rights which are affected. Among these are the right to food, the right to shelter and adequate living conditions, the right to health care, the right to life and personal integrity, the right to work and to an adequate wage, freedom of residence and movement, family unity, the right to education, legal personality, and freedom of thought, association, expression and assembly. Information received by the Representative of the Secretary-General from Governments, intergovernmental and regional bodies, as well as in the course of the visits undertaken to various countries, tends to confirm the analysis of the consequences of displacement contained in the analytical report.

31. The country studies included in the IIDH report also highlight the importance of organizing displaced persons in order to safeguard the cohesiveness and viability of their communities and ethnic groups, to encourage self-help in meeting their material needs and to facilitate bringing their needs and problems to the attention of the competent authorities. On the other hand, IIDH's report also indicates that in some countries, being identified as a displaced person leads to a presumption that one is "subversive" or, when the displacement is caused by armed groups struggling against the Government, that one is a "traitor" or "informer".

32. It should be noted that, by and large, there is considerable correlation between the causes and consequences of displacement, their implications in terms of the needs they create and the response of the Governments concerned. Where the causes are natural, a national consensus to provide protection and assistance is likely to develop and the Government often assumes responsibility with the assistance of the international community. Only when the country is divided and the affected population alienated or segregated might the Government be indifferent or even hostile to providing protection and assistance. But by far the most serious cases emanate from conflicts where the displaced are more likely to fall into a gap of responsibility created by the cleavages of armed conflict or are the victims of one or another side in the conflict. It is particularly in circumstances of armed conflict that protection and assistance by the international community are needed, often urgently, although they are frequently difficult to provide.

B. Identifying the internally displaced

33. The need to identify the population affected by internal displacement has raised the issue of definition. The problem, however, is not so much one of legal definition as it is of establishing functional criteria for determining who is entitled to assistance and protection. Defining the internally displaced with reference to causes and consequences helps delineate the scope and sharpen the focus on the targeted population. On the other hand, any definition of the concept risks being either too narrow or too broad, with the

result that people who need protection and assistance might be excluded or the category might become too diffuse to be manageable. A balance needs to be struck.

34. Referring to Economic and Social Council resolution 78/1990, the analytical report of the Secretary-General uses the term "internally displaced persons" to mean "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country" (para. 17). Replies received for the purposes of the present study both confirm the definition offered by the analytical report and add other factors which reflect different perspectives. Jordan indicated that it agreed with the working definition proposed by the analytical report. UNHCR said the definition was "a good starting point for consideration of the problem of internally displaced persons". UNESCO endorsed the definition but added that "recent developments in the Balkans and Eastern Europe ... and newly independent States with conflicting territorial claims between ethnic groups, may necessitate some slight modifications".

35. Several organizations suggested that the definition in the analytical report was unnecessarily narrow and did not cover certain persons or groups of persons that needed protection. The United States, for example, argued against the quantitative requirement and observed that the definition proposed in the analytical report "could be interpreted to exclude persons who are internally displaced in small numbers, or even individuals who are internally displaced. While [the] initial study may focus on specific large groups of displaced persons, we would not want to lose sight of the fact that small groups and/or individuals may also suffer displacement". IOM also argued against the exclusion of small numbers of persons from the working definition, especially since the rights that are affected are largely individual rights. UNHCR pointed out that requiring "large numbers" to be a criteria "could involve a subjective evaluation giving rise to a certain element of imprecision". The refugee definition, it noted, contained no such requirement.

36. WFP also contended that the definition of internally displaced persons contained in the analytical report "appears to be unnecessarily and inappropriately restrictive. We consider that the words 'suddenly or unexpectedly' should be dropped, the word 'flee' should be replaced by 'leave', and 'in large numbers' should be deleted.... While such a 'large number' definition could apply to a war type of situation, FAO [the organization of which the WFP is an operational arm] considers that the definition should cover the very many 'few thousands' evicted and displaced people". WFP maintains that all displacement problems should be examined on a case-by-case basis, regardless of their scale (which cannot be known until assessed), with a view to providing appropriate assistance.

37. ICRC replied that the definition in the analytical report "is too general to serve as a basis for a specific instrument". The underlying concern of the ICRC appears to be that it would be undesirable to distinguish between civilian populations displaced by armed conflict and those who have not been displaced, but whose needs are similar.

38. A number of non-governmental organizations suggested a definition which views internally displaced persons as "internal refugees". The Friends World Committee for Consultation, one of the NGOs which has taken the lead in putting the issue of displaced persons on the international agenda, proposed the following the definition: "Persons who have been forced to flee their homes and who have not crossed an international frontier".

39. IIDH proposed the use of the definition adopted by the 1989 International Conference on Refugees in Central America (CIREFCA) which suggests that internally displaced persons should be understood to mean persons in a refugee-like situation within their own country. CIREFCA's definition states that "displaced persons are persons who have been obliged to abandon their homes or usual economic activities because their lives, security or freedom have been endangered by generalized violence, massive violations of human rights, an ongoing conflict or other circumstances which have or are seriously disturbing the public order, but who have remained within their own countries". This definition is based largely on the broad definition of refugee set forth in the 1984 Cartagena Declaration on Refugees rather than the strict definition of refugee in the 1951 Convention relating to the Status of Refugees, which requires fleeing one's country "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".

40. The Lawyers Committee for Human Rights takes a similar position, proposing an overarching concept of "dispossessed persons". This term encompasses four categories: "international refugees", which includes those who meet the definition of the 1951 Convention; "international forced migrants", comprising "those who meet the broader definition employed in the OAU [Convention] and the Cartagena [Declaration]"; "internal refugees", defined as those who have a well-founded fear of persecution on any of the grounds listed in the 1951 Convention but who have remained within their own country; and "internal forced migrants", embracing those who have fled for the reasons recognized by the OAU and the Cartagena Declaration, but remain within their own country.

41. IOM similarly advanced the idea of defining the problem in terms of displaced persons in general, rather than limiting it to "internally" displaced persons. This would avoid the risk of adopting a new definition which, in effect, gives the international community competence and responsibility for a second category of persons (in addition to refugees) but would not cover those in similar circumstances who nevertheless are neither refugees nor internally displaced. Defining the problem in terms of "displaced persons" would leave the door open to addressing the plight of externally displaced persons who do not meet the classical definition of refugee. Such a definition would ensure that the concept of displaced persons or returnees is applicable to former refugees who have returned to their own country but not their place of origin, and thus remain displaced.

42. The reply of WHO also indicated that the definition is not broad enough and advocated recognizing those who flee their homes for reasons of acute poverty, environmental degradation, or for social problems such as ethnic or racial tension. WHO submitted that "the root causes of displacement are primarily socio-economic; that is, the failure of the global development

process which has led to unequal distribution of wealth both between and within countries". While WHO's line of argument points to an important aspect of displacement, it would not be useful to include within the concept of internally displaced persons all populations who migrate because of underlying socio-economic issues. Reinvigorating the global development process is a responsibility of the United Nations system that by far exceeds the mandate of this study.

43. Other respondents also point out the relationship between the larger problem of underdevelopment and the specific problem of the internally displaced, without advocating the inclusion of all those affected by poverty, uneven development or environmental degradation. This was essentially the view of the El Salvadorian authorities in their discussions with the Representative of the Secretary-General.

44. To a degree, this view is also shared by the Department of Humanitarian Affairs (DHA) which emphasized the needs concept, but not to the extent advocated by WHO. After stating that DHA considers the definition of the internally displaced in the analytical report to be adequate for the time being, the reply proceeded to quote the view of the United Nations High Commissioner for Refugees "that it made little sense for UNHCR to bring relief and protection to one group of suffering people, i.e. refugees under the 1951 Convention, and to disregard the misery of the other afflicted people". DHA proposed defining the question on the basis of needs and stated that

> "what is important is that the scope of the target population in need of assistance, is broadened to encompass internally displaced persons and all groups of suffering people whose needs are likely to be left unmet by their own authorities and who, therefore, would be dependent upon the international community for relief and protection. The important question, as far as the humanitarian relief organizations are concerned, is not the category within which persons are classified but rather whether the persons concerned are in need of humanitarian assistance based on objective evaluation of existing criteria".

45. Persons in need of protection are what is emphasized by UNHCR. Its competence for refugees, it points out, "is based on the displacement of such persons coupled with their need for protection". Its "activities for persons displaced within their own country for refugee-like reasons" follow the same reasoning. "The lack of protection from their own country is the key aspect which makes internally displaced persons of concern to the international community". The refugee definition, it points out, "does not cover persons displaced from their homes for reasons of famine or natural disaster".

46. Several other themes expressed in the replies to the Representative of the Secretary-General relating to the definitional problem deserve mention. The reply of Egypt advocates a definition of the internally displaced as

> "a group of persons permanently or normally residing at specific locations and who, as a result of political or other natural circumstances that cannot be forecast or averted, are suddenly forced to leave their original place of residence en masse, without prior

> preparations, and flee to another locality within their country where the necessary preparations have not been made to ensure their enjoyment of a minimum standard of living".

This definition takes particular note of the existence of sub-standard living conditions or lack of preparedness in the area to which the displaced flee. Accordingly, attention needs to be given to situations where the rights of the displaced are in jeopardy, either because of inadequate living conditions, discrimination, repression, or a combination of these factors.

47. Cyprus suggested that the element of being unable to return should be added to the definition. This suggests that efforts should focus on persons who have been displaced and are unable to return, if not to their own home in the strict sense, then to their place or region of origin. The right to stay or return home has also been strongly advocated by UNHCR.

48. The desire to return was the gist of the Representative's findings in the Sudan, where some people had returned to their region of origin despite the dangers of insecurity in the nearby war zone, and seemed better adjusted than those in camps around the capital city. It also explains the decision of many El Salvadorian peasants to return to their villages even while the war was still raging in those areas.

49. These concerns are pertinent to the protection and assistance of displaced persons whether or not they figure in the definition of displacement. They highlight the fact that victims of displacement include not only those who have been forcibly displaced, but also indigenous populations who may be suffering deprivation and whose demographic make-up, cultural autonomy and other rights have been adversely affected by an influx of outsiders. There are undoubtedly varying degrees of overlap between the category of internally displaced persons and other categories recognized by international human rights or humanitarian law, such as civilian populations affected by armed conflicts and populations at risk of starvation. Nevertheless, since groups of internally displaced persons share certain problems and characteristics, it is not only appropriate but even urgent to focus on the rights and needs of the millions of persons around the world who come within this specific group.

50. Perhaps the most important issue is whether efforts to study this phenomenon, and subsequent efforts to protect the rights of internally displaced persons, should focus exclusively on persons who have left their homes for the same reasons as refugees but who have remained in their own country, or should extend to migrants who have been forced to leave their homes for other reasons. There is much to support the contention that the working definition of internally displaced persons should focus on those who, if they had left their own country, would be considered refugees. This part of the internally displaced population would include both those who have left their homes because of a well-founded fear of persecution on the grounds of race, religion, membership of a particular social group or political opinion, and those who, according to the Cartagena Declaration (and similarly in the OAU Convention of 10 September 1969 governing the specific aspects of refugee problems in Africa) have been forced to migrate "because their lives, safety

or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or circumstances which have seriously disturbed public order".

51. Displacement of large numbers of persons as a result of natural or man-made disasters such as floods, volcanic eruptions, earthquakes, and nuclear or chemical accidents may lead the population to experience some of the same problems as those who have been forced to leave their homes because of war, persecution, generalized violence and similar reasons because of the sudden and large-scale nature of the migration. There are also important distinctions: in most instances, they presumably would not suffer from discrimination, nor is there a priori any reason to presume that the authorities would be unwilling to respect their rights and provide needed assistance within the limits of available resources or with contributions from the international community. However, there have been well-documented cases of massive displacement resulting from a combination of natural causes and racial, social or political causes, in which serious and widespread human rights violations occurred. For these reasons, it would be preferable to include this particular type of category of displacement within the scope of the mandate on the internally displaced pending the availability of more information which might necessitate a different approach.

52. The task of drafting an appropriate definition of this concept should be coordinated with the work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities which has been addressing the question of "population transfer". By resolution 1990/17, the Sub-Commission decided to include the question of the human rights dimension of population transfer in its future work programme and in resolution 1992/28, appointed two Special Rapporteurs to prepare a preliminary study on this question. While the Special Rapporteurs have not yet produced a working definition, some NGO documents have proposed definitions of population transfer which distinguish that concept from that of displacement. It will be necessary, as the work of the Sub-Commission on this issue proceeds, to ensure that the efforts of the Representative of the Secretary-General on internally displaced persons and the Special Rapporteurs on the human rights dimensions of population transfer are complementary and coordinated.

C. Concluding comments

53. On balance, in the view of the Representative of the Secretary-General a conclusive definition at this stage may not be necessary. While a discussion of the definitional issues is important, it should not be suggested that agreement on a definition would, in and of itself, result in a resolution of the basic problem or that the absence of a single definition prevents the provision of assistance or protection now. For current purposes, it is useful to identify only the main features of a working definition. It should assist the Representative in his work and facilitate standard setting. The one provided in the analytical report should serve this initial purpose. It could be further developed, refined and modified in the light of comments received and experience. When it is decided that international standards concerning internally displaced persons need to be formulated more precisely, the appropriate definition would have to be carefully crafted as part of the standard-setting exercise.

54. The essential thrust of the proposals contained in this study is not to create new categories of persons having special rights, but rather to extend the protections already recognized as the rights of persons in certain situations to others in analogous situations, and thus promote a more harmonious and coherent approach to human rights. As a matter of priority, it is necessary to focus on situations where large numbers of persons have been displaced. Indeed, it may be that this is not merely a question of priority, but an issue that touches on the nature of the problem itself. It may be, in other words, that existing international human rights standards, doctrines and procedures are reasonably well adapted to the situations of individuals or small numbers of persons who are forced to leave their homes, but not well adapted to the issues which arise in situations that cause large numbers of persons to flee from one part of their country to another.

III. INTERNATIONAL LEGAL STANDARDS

55. There is dispute about whether existing international legal instruments provide sufficient protection for the internally displaced and whether what is needed is more legal prescription or simply better implementation of existing law. The analytical report of the Secretary-General on internally displaced persons suggests that the problems of the internally displaced are so severe and particular that they cannot be adequately remedied by the general law applicable to human rights protection but should instead be addressed separately. Protection derived from the Geneva Conventions of 12 August 1949 and the additional Protocols concerns persons displaced by armed conflicts and only applies to the contracting States parties. Some scholars argue that compiling and restating existing standards in the form of guiding principles, a code of conduct or declaration would not only help clarify the situation but also lend an added legal and moral force, especially among those who might claim not to have been parties to the original instruments.

56. Discussion of existing international standards and laws pertaining to the human rights of internally displaced persons can be classified under the principal sources of applicable law, the specific clusters of rights guaranteed by law, the extent to which they in fact provide adequate protection and ways in which they might be made more effective.

A. Principles of existing law

57. Human rights and humanitarian law may be seen as the principal sources of existing protections for internally displaced persons; along with refugee law, they also may be the foundations for articulating a basis for further protections. While these bodies of law are conceptually distinct, they have influenced and informed each other and also contribute to a general corpus of laws capable of application to the problems experienced by internally displaced persons.

1. Human rights law

58. Unlike refugee law, which largely applies only when a border is crossed, or humanitarian law, which applies to situations of armed conflict, human rights law proclaims broad guarantees for the fundamental rights of all human beings. The International Bill of Human Rights, composed of the Universal

Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, represents the basic corpus of human rights law, recognizing the inherent dignity and equality of all human beings and setting a common standard for the achievement of their rights. These instruments guarantee a panoply of rights applicable to the situations common to the internally displaced, varying from the so-called "negative" rights, such as the norm stating that no one shall be subjected to torture, arbitrary interference with family, home, or privacy and, under article 17 of the Universal Declaration, arbitrary deprivation of property, to "affirmative" rights, such as the right to an adequate standard of living and the right to liberty and security of person.

59. The International Covenant on Civil and Political Rights and its Optional Protocol elaborate on the principles enunciated in the Universal Declaration and provide a procedure for formal complaints and investigations. The International Covenant on Economic, Social and Cultural Rights is the primary source of obligations to take affirmative steps to ensure progressively the economic and social well-being of all persons. Among the rights specifically enunciated as forming the basis for assisting the internally displaced are the right to food, clothing, housing and medical treatment. Other international legal instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families contain provisions offering a wide range of relevant human rights guarantees.

60. Regional human rights instruments, including the African Charter on Human and Peoples' Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights, provide similar and in some cases additional guarantees.

61. Although human rights law provides a basis for protection and assistance for internally displaced persons, it does not directly address some of the situations affecting the internally displaced, such as forcible displacement and access to humanitarian assistance.

2. Humanitarian law

62. The four Geneva Conventions of 1949 and the Additional Protocols of 1977 reaffirm the principle that, in situations of armed conflict, those not directly participating in the hostilities shall be treated humanely. Article 3, common to all four Geneva Conventions, categorically prohibits violence to life and/or person, the taking of hostages, and outrages upon personal dignity of persons in situations of "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties". It affirms the due process requirement and further imposes an affirmative duty to provide the sick and wounded with medical care. The obligation to apply article 3 is absolute for "each Party to the conflict" and is not contingent on reciprocity.

63. Protocol II to the Geneva Conventions (1977) is also applicable to internal conflicts which involve "organized armed groups ... under responsible command" exercising control over territory (art. 1). The specific need for protection of persons internally displaced by civil conflict was recognized in article 17 (1) which states that "the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand", in which case "all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, safety, and nutrition". And according to article 17 (2) "civilians shall not be compelled to leave their own territory for reasons connected with the conflict". Protocol II adds collective punishment, terrorism, rape, enforced prostitution, slavery, pillage and threats to commit any of the above to the list of prohibited actions.

64. The Geneva Conventions confer special status on the International Committee of the Red Cross (ICRC), which is mandated by the Statutes of the International Red Cross and Red Crescent Movement to protect and assist victims of armed conflict as provided for under humanitarian law.

65. Existing international standards specifically concerning the rights of internally displaced persons under humanitarian law, however, have limitations. While article 17 of Protocol II to the Geneva Conventions is a useful provision, it applies only to persons displaced because of armed conflict, and only to States parties to Additional Protocol II. Moreover, the security justification for displacement is broadly construed. The article would also appear not to cover cases where populations move because of generalized violence and fear - as opposed to being ordered or otherwise compelled to do so - which is often the case with the internally displaced.

3. Refugee law

66. Internally displaced persons have much in common with refugees; the critical, and in some instances only, distinction is that crossing an international border turns an internally displaced person into a refugee. While some have argued that this is an arbitrary distinction limiting the applicability of refugee law to internally displaced persons, it is of enormous consequence, as a displaced person's presence in a country other than his or her own implicates a well-established protective regime, and affords the person rights recognized under international law. In particular, crossing a border is vital to the concept of non-refoulement, the right of non-return, which is the core of refugee protection. For internally displaced persons, one of the most practically important rights drawn from refugee law may be the right to seek asylum. Recently, in such countries as Iraq and the former Yugoslavia, "safe haven" zones have been created to protect those internally displaced. It is important that such zones do not serve to prevent persons from exercising their rights to leave and seek asylum.

67. Although there has been no formal redefinition of the term "refugee" for the purposes of State's obligations under the 1951 Convention and the 1967 Protocol, the competence of UNHCR has been extended to the plight of persons displaced in a manner other than that anticipated by the Convention. In some cases, the UNHCR mandate now reaches to those displaced for reasons

other than a well-founded fear of persecution on the grounds outlined in the Convention, and even to those who have not crossed national boundaries.

68. Regional instruments, such as the OAU Convention and the Cartagena Declaration, provide variations broadening the definition of "refugee" by considering other causes of dislocation such as external aggression, occupation, foreign domination or events seriously disturbing public order in either a part or the whole of the country of origin or nationality, although the definitions still retain the criterion of crossing a border. UNHCR considers such persons to be of concern to its Office and in 1981 the General Assembly recognized the competence of UNHCR for a broader category of refugee. The UNHCR has thus provided protection and assistance to "de facto refugees" displaced by armed conflict, even if they did not meet strict interpretations of the Convention definition which requires individualized determinations of persecution. In addition, through its "good offices" function, UNHCR, at the request of the Secretary-General and General Assembly, has provided assistance to internally displaced persons in a rapidly increasing number of countries. UNHCR practice thus reinforces the view that there is now a general international concern for broader categories of displaced persons.

69. At the same time, it is often emphasized that any attempt to establish a comprehensive framework for the protection of the internally displaced should not undermine the obligations established in existing human rights and refugee law, in particular the right to seek asylum from persecution and to non-refoulement.

70. Generally speaking, the protection derived from refugee law in so far as internally displaced persons are concerned is limited by the very fact that the affected population, unlike refugees, are within the borders of their own countries, and the causes of their displacement are not always identical to those of refugees. Any extension of refugee law to them can only be partial and therefore only partially protective.

B. Proposals for new standards

71. Emerging from the responses is a tension between those who believe that the existing law provides adequate coverage for the rights of the internally displaced and those who advocate a new regime. Both are motivated by the same policy considerations. Those who consider the present law adequate want to strengthen its protection by reaffirming it and focusing attention on implementation and enforcement mechanisms. Those who advocate a new regime are particularly concerned that the internally displaced often suffer unusual hardships, deprivations and gross violations of human rights which require special attention and remedial measures.

72. There can be little if any doubt that internally displaced persons suffer from severe problems that do not confront individuals under normal conditions. All people may be entitled to physical security, shelter, food, water, health care and other basic amenities, and under normal conditions they receive these services in varying degrees along with others in society. Displacement is often created by, and in turn results in, crisis situations where the rights normally taken for granted are acutely compromised. Under these conditions

both the norms and their application need to be tailored to the nature and the magnitude of the crisis. In effect, the challenge becomes more than one of enforcement and mechanism. Just as certain categories of vulnerable groups, such as refugees, the disabled, women and children, require special regimes for protection, so do the internally displaced.

73. What is particularly important to bear in mind is that law is not an abstract set of rules detached from the realities of political, economic, and social conditions. Quite the contrary. It is reflective of the dynamics of the community processes in which people, whether individuals or groups, seek certain objectives, through established institutions and using resources, with certain short- to long-term consequences. Law is the outcome of a decision-making process in which a few authoritative decision makers play a pivotal role, but in which the community members participate to a lesser or greater degree, depending on a wide variety of factors, including the availability of resources. The outcome, that is the law, will therefore vary considerably according to the leverage of certain institutions or particular interest groups.

74. The chronic lack of implementation itself may be an indication that existing human rights and humanitarian standards may not be adequately tailored to meet the challenge of the crisis. The inadequacy of the current response may therefore be a symptom of a deeper normative deficiency.

75. The analytical report indeed concluded that there is at present no clear statement of the human rights of internally displaced persons, or those at risk of becoming displaced. The applicable international law is a patchwork of customary and conventional standards: parts of it are applicable to all persons, parts only to certain subgroups of displaced persons such as those displaced as a result of armed conflict, and parts may not be applicable in certain situations, such as an emergency threatening the life of the nation or, on the contrary, may be applicable only during a state of emergency. There are about 24 million internally displaced persons around the world, most of whom suffer, have suffered or risk suffering extremely serious violations of their basic human rights. This constitutes a humanitarian and human rights crisis of major proportions, which calls for clear guidelines that could be applied to all internally displaced persons, regardless of the cause of their displacement, the country concerned, or the prevailing legal, social, political or military situation.

76. According to the analytical report, elaboration of such guidelines would consist, at least in part, of clarifying the implications of existing human rights and humanitarian law for persons who are internally displaced and fashioning from existing standards one comprehensive, universally applicable body of principles which addresses the main needs and problems of such persons. Among the issues recommended for consideration are: the circumstances justifying restriction or temporary suspension of freedom of residence; procedures and safeguards intended to ensure that involuntary displacement is not imposed or implemented arbitrarily, or that voluntary resettlement is voluntary; principles governing the protection and enjoyment of basic human rights frequently affected by displacement, such as freedom of movement, family unity, non-discrimination and equal protection of law;

general principles concerning the provision of and access to emergency relief, care and essential services; and principles concerning the duration of displacement, reparation and the right to return.

77. The inadequacy of existing law and the need for stipulating new standards that would incorporate and add to the provisions of international instruments pertaining to the internally displaced persons was underscored by the reply of the Under-Secretary-General for Humanitarian Affairs, who wrote:

> "It is evident that there are gaps in the legal protection of the various categories of displaced persons and that the current situation is not satisfactory as far as basic legal protection of displaced persons is concerned. It would consequently be desirable to undertake a more detailed review of available legislation, national and international, and on that basis, consider whether new instruments are required to improve the safety and well-being of the victims of displacement."

78. The Governments of Burkina Faso, Cyprus, Guatemala and Norway also indicated the need for new standards specifically designed to protect the internally displaced. In the discussions with the Representative of the Secretary-General, officials of the Russian Federation argued that while existing instruments did not provide sufficient protection for the internally displaced, they offer a basis for the formulation of some form of document that would set forth more adequate protection. They saw the formulation of a convention as a long-term objective, but argued for developing guiding principles or a declaration that would help pave the way for a legally binding instrument in the future. The replies of UNESCO, the United States Committee for Refugees and Lawyers Committee for Human Rights also supported the development of new international standards.

79. The Refugee Policy Group suggested specific areas for which new standards would be desirable:

> "While we strongly urge that greater attention be paid to better implementation of existing standards of human rights and humanitarian law, and that a compilation of existing standards would be useful, we believe that new guidelines and standards are necessary. The standards or guidelines should contain express prohibitions against the forcible displacement of persons on political, racial, religious or ethnic grounds, as well as stringent restrictions on the displacement of persons in wartime. They should elaborate fully on the right to food and focus on obstruction of people's ability to produce or find food as well as interference with humanitarian assistance. Special provisions should be included for vulnerable groups such as women, children, the elderly and the handicapped. No derogation from these standards, even in time of emergency, should be permissible. The standards should apply not only to governments, but also to insurgent groups under whose control large numbers of displaced persons are often located."

80. The report submitted by IIDH also supports the adoption of a declaration on the rights of internally displaced persons as a first step, to be followed by the elaboration of a convention at some future time. The Friends World Committee for Consultation suggests that, as a first step, a compilation of

existing standards which protect the rights of internally displaced persons should be prepared. The Representative of the Secretary-General (or any alternative mechanism decided upon by the Commission) "should then be requested to identify gaps in the existing law, and prepare draft guidelines or principles to fill the lacunas and compliment existing standards".

81. Other replies emphasized the need for implementation of existing standards and perhaps some compilation and reformulation of standards. The reply of ICRC focused exclusively on the rights of displaced persons within its area of competence, and did not address the question of the possible need for standards concerning all displaced persons, including those displaced for reasons other than armed conflict. In general, the reply emphasizes the need for better compliance with existing standards. The reply of IOM likewise suggests that existing standards appear to be adequate, and that the main problem is failure to comply with human rights and humanitarian law.

82. The view that existing law is adequate does not appear to contradict the value of compiling and consolidating existing instruments and norms. Even those who questioned the need to develop new standards expressed fewer reservations on, and even support for, the idea of an effort to restate and reaffirm existing standards, with some specifying the need for a "code of conduct" to identify minimum rights.

83. One area for new standards that will require extensive consideration is the issue of humanitarian access. There are certainly international legal presumptions in support of aid to massive numbers of people at risk of starvation, death, genocide, or other humanitarian disasters. As UNHCR points out,

> "in order to provide effective protection to internally displaced persons, access of humanitarian agencies to those in need and access of internally displaced persons to safety and relief are fundamental principles which must be addressed ... More work could be done to develop the legal concept of humanitarian access which following General Assembly resolution 46/182 should be based on the consent of the affected country. Consideration should be given to the creation of a mechanism which could be used to obtain such consent and thereby guarantee access".

84. In some cases, however, it is the withholding of consent which constitutes the basis for the humanitarian crisis. Recent events have shown that increasingly the application of Chapter VII of the Charter has been expanded to include massive starvation and other human rights violations, when there is agreement that these constitute threats to international peace and security. In such cases, States are obliged by this prescription to provide access and cooperate in the delivery of humanitarian assistance to those in need. This is certainly critical to internally displaced persons since access is often essential to their survival. As the Department of Humanitarian Affairs stated in its reply to the Representative of the Secretary-General,

> "A crucial question for this Department, and the humanitarian agencies, is the problem of access to victims of emergencies and displacement. Many governments see the regulation of access as a

> fundamental question of the sovereignty of the State. While that viewpoint is understandable, the consensus in the international community appears to be gradually moving in a new direction as may be seen in the recent resolution of the Security Council on Somalia. Further reflection, apart from the guiding principles laid down in General Assembly resolution 46/182 last year, will assist in the evolution of international norms guaranteeing access to the victims of humanitarian emergencies and mass displacement. It is basically a question of striking a balance between sovereignty and solidarity with people in need."

85. The reply of WFP stressed the need for standards concerning the right of humanitarian access:

> "WFP, along with a number of other operational UN agencies, has become more frequently involved in delivering relief assistance to internally displaced persons in situations of conflict and civil disorder. Sometimes, as in Somalia, Liberia, Mozambique and Rwanda, WFP is obliged to function in places and at times where there has been a complete breakdown of law and order and there are no authorities to ensure the security of relief operations. In these instances food is frequently the most volatile type of assistance, becoming a magnet for armed elements who extort food or money for protection, or who simply loot entire consignments."

86. Admittedly, the State's obligations to protect certain fundamental rights may be abridged only in narrowly circumscribed emergency situations. Indeed, the emergency situations which have resulted in displacements have not, in many cases, justified a State's derogation from its obligations under the law. But this has not stopped States from denying protection to internally displaced persons. While some legal scholars see the challenge in making enforcement mechanisms more effective, others hold the view that new standards specially tailored to the exigencies of internal displacement would improve the prospects for a more effective regime of protection and assistance.

C. Concluding comments

87. Review and analysis of the various replies sent to the Representative of the Secretary-General lead to the conclusion that it would be useful to prepare a compilation of the existing international standards which are most relevant to the protection of the rights of internally displaced persons. The compilation and evaluation should contain a commentary on the implications of these standards, the extent to which they address the problems faced by internally displaced persons, and practical proposals for their implementation. Such a compilation would be of great practical value to Governments and international bodies. The question of what additional standards specifically concerning internally displaced persons are needed would then be addressed after the compilation of existing standards has been completed.

88. Meanwhile, it is important to emphasize as a matter of urgency that in some cases, effective protection of the human rights of displaced persons to such survival needs as food, water, shelter, medical care and protection

against unlawful physical violence and military force, depends on access to humanitarian assistance. These are rights to which every person is entitled, and which every State is obliged to respect. However, experience has shown that there is a need to go further in defining the implication of these universally accepted standards, and in particular the relative rights and responsibilities of individual States and of the international community when faced with large-scale crises in which the lives of tens or hundreds of thousands and perhaps millions of persons are at stake.

IV. INTERNATIONAL MECHANISMS

89. Responsibility for assisting internally displaced persons lies in the first instance with the home country, but if a country is unable or unwilling to meet the minimum standards required by humanitarian or human rights law, these guarantees may be met only through international assistance. Increasingly, gross violations of human rights, especially when they involve masses of people, are being drawn to the attention of the international community, often under pressure from public opinion. Moreover, the international community has demonstrated increasing concern with humanitarian and human rights principles and their application to internally displaced persons. Further, international mechanisms have been instituted and are still being developed to provide protection for victims of gross violations of human rights, whoever commits them and wherever they take place. Measures to implement emerging norms also are being taken, ranging from diplomatic persuasion to more active international action. These trends overlap and interplay, but should be seen as providing a conceptual basis for justifying principles and operational mechanisms for the protection of the internally displaced.

A. Perspectives on existing institutions

90. Recent developments in the international protection of fundamental human rights have established two concepts critical to the treatment of internally displaced persons. First, an established body of rights now exists which benefits all persons, including the internally displaced. Second, when these basic rights are threatened, the protection of the population involved, including the provision of humanitarian assistance, becomes a matter of international concern.

91. The General Assembly, for example, has acknowledged that, in cases of both civil and natural disaster, the condition of internally displaced persons is of concern to the international community. General Assembly resolution 43/131 on Humanitarian assistance to victims of natural disasters and similar emergency situations recognizes that persons outside the original definition of "refugees" are also within the scope of international, and therefore United Nations, concern. In resolution 46/182 of 19 December 1991, which created the position of Emergency Relief Coordinator, the General Assembly affirmed that humanitarian assistance for victims of natural disasters and other emergencies was a matter of international concern. The Secretary-General has also approved guidelines "stress[ing] the responsibility of States to take care of the victims of emergencies occurring on their territory and the need for access to those requiring humanitarian assistance" (A/47/277-S/24111 of 17 June 1992).

92. Increasing attention to the relief needs of the internally displaced, however, has not been accompanied by increased attention to protection. There is still no mechanism in the United Nations human rights system whose mandate explicitly covers the protection needs of internally displaced persons. The Commission has special rapporteurs and working groups in the areas of enforced or involuntary disappearances, summary or arbitrary executions, torture, arbitrary detention, religious intolerance, the question of mercenaries and the sale of children. But the overall plight and circumstances of internally displaced persons do not fit into these categories and they generally remain outside Commission consideration. The appointment of the Representative is a recognition of this gap although the mandate is envisaged as a first phase covering the preparation of this report.

93. Several States have indicated that the Commission on Human Rights should play a greater role in improving the human rights position of the internally displaced. Cyprus urged greater coordination between humanitarian and human rights bodies within the United Nations system, and added that "human rights bodies should also show an even greater interest in refugee and displaced persons issues, with particular emphasis on human rights violations and on means of protection". Guatemala and Jordan also replied that the Commission should assume a greater role in the promotion and protection of the human rights of displaced persons, on a permanent basis. Similarly, Switzerland recalled that the President of the Confederation in his statement before the forty-eighth session of the Commission, had suggested the creation of a working group of five experts to examine both internal and external displacement with a view to identifying the causes and helping to bring about conditions permitting refugees and displaced persons to return to their homes. No State expressed opposition to the idea that the Commission on Human Rights should assume a more active role in this regard.

94. Among the specialized agencies, WHO considered monitoring and promotion of human rights for displaced populations on a permanent basis to be intricately linked to preventive action designed to avoid situations which lead to conflict and flight. According to WHO, the Commission on Human Rights has an important role to play within a coordinated, overall United Nations strategy.

95. Within the United Nations system, the role of UNHCR is perhaps the most pertinent to the needs of the internally displaced. In its reply to the Representative of the Secretary-General, UNHCR gave a brief but comprehensive review of the areas in which it has been involved in the protection of the internally displaced. In the Horn of Africa and Iraq for example, returnees whom UNHCR was assisting became intermixed with internally displaced persons living in the same areas. Another situation is the "special operations" undertaken at the request of the Secretary-General or the General Assembly. Such was the case with the designation of UNHCR as the lead agency in the relief operations in the former Yugoslavia. The mechanism of a lead agency has proved to be of vital importance in mobilizing the resources of the various organizations whose mandates may not be focused on internally displaced persons, but could nonetheless render valuable protection and assistance under certain circumstances. The third type of situation occurs through participation in international or regional arrangements for the

provision of development and humanitarian assistance to refugees and internally displaced persons, for example SARRED in Southern Africa and CIREFCA in Central America.

96. A 1992 Note on International Protection (A/AC.96/799), which reflects the findings and recommendations of an internal Working Group on International Protection established to advise the High Commissioner on how to address new challenges faced by her Office, provides a detailed account of areas in which UNHCR has been actively involved in extending protection to internally displaced persons around the world. It is obvious from the range of activities described that UNHCR's involvement in such significant and multifaceted operations and situations has extended its protection role to new areas. Indeed, UNHCR appears to be prepared to respond to the increasing challenge which the trend of displacement presents to the international community. As the Note states:

> "From an examination of the common needs of the various groups for which UNHCR is competent, it is clear that, with protection at the core of UNHCR's mandate, displacement, coupled with the need for protection, is the basis for UNHCR's competence for these groups. The character of the displacement, together with the protection need, must also determine the content of UNHCR's involvement.
>
> The Working Group considered that the same reasoning held true for persons displaced within their own country for refugee-like reasons. While the Office does not have any general competence for this group of persons, certain responsibilities may have to be assumed on their behalf, depending on their protection and assistance needs. In this context, UNHCR should indicate its willingness to extend its humanitarian expertise to internally displaced persons, on a case-by-case basis, in response to requests from the Secretary-General or General Assembly." (paras. 15-16)

97. UNHCR sees its role in the context of complementary inter-agency cooperation, in particular with the Commission on Human Rights. The Note calls for the development of "a joint strategy with human rights bodies, notably the Centre for Human Rights and the United Nations Commission on Human Rights" in "monitoring the basic human rights and physical safety of internally displaced persons". UNHCR, however, stipulates conditions for such involvement; these include a request by the Secretary-General, the consent of all the parties concerned, the availability of adequate funds, and the political support of the international community. The important contribution that UNHCR can make in protecting the rights of internally displaced persons should therefore not obscure the essential difference in the mandate of that Office and a special thematic mechanism on internally displaced persons. In its reply to the Representative of the Secretary-General, UNHCR indeed states that "in the case of internally displaced persons, there is no specific legal instrument that addresses their particular protection needs let alone a body unequivocally mandated to undertake the protection of internally displaced persons who are not receiving such protection from their own country." The High Commissioner herself, in a meeting with the Representative of the Secretary-General, indicated that her Office would welcome the opportunity to

cooperate more closely with the Commission in the protection of the human rights of internally displaced persons, including through any thematic procedure which the Commission might decide to create.

98. ICRC indicated that "in the field, cooperation with the organizations on the spot is very often necessary in order to avoid a duplication of relief work", as long as this does not lead to "a confusion of the respective mandates" of the agencies and organizations concerned, nor prejudice the unique role of the ICRC as "custodian of the rules designed to limit human suffering in times of armed conflict".

99. IIDH strongly supported the creation by the Commission on Human Rights of a thematic mechanism with monitoring functions.

100. The non-governmental organizations which replied also supported the creation of a thematic mechanism on internally displaced persons, in some cases offering suggestions as to the functions which it might assume. The Friends World Committee for Consultation suggested a list of functions which include: to seek and receive information, liaise with relevant parts of the United Nations system and concerned regional organizations, enter into dialogue with concerned parties, undertake fact-finding missions and monitor existing situations, initiate case studies of situations of internal displacement, draft new protection principles, advise the Secretary-General on measures to be taken to alleviate the plight of internally displaced persons, and provide the Secretary-General with early warning of internal displacement and potential refugee flows.

101. The Refugee Policy Group submission emphasizes the need for international monitoring and reporting on the worldwide situation of those internally displaced. "At present, there is no systematic collection of information about internally displaced persons or any public international reporting about their protection needs." To effectively address the human rights dimension of internal displacement, "a permanent thematic mechanism should be created and tailored to meet the specific needs of internally displaced persons". Specifically, the RPG submission recommended that the Representative of the Secretary-General on internally displaced persons (assuming it is the mechanism chosen by the Commission) be given fact-finding, monitoring, and reporting functions so that he/she might fill the reporting and monitoring gap on the internally displaced.

102. RPG also recommends that the Representative has the authority to promote dialogue and remedies and further emphasizes the need for coordination with humanitarian agencies. Since UNHCR, DHA, the United Nations resident coordinators and the specialized agencies are all involved in the provision of assistance and relief to internally displaced persons, it is essential that the Representative "maintain a direct relationship" with these parts of the United Nations either personally or through the office of the Secretary-General in order to reinforce the humanitarian efforts of United Nations agencies.

103. Some replies viewed the mandate of the Representative quite broadly and went further in suggesting how the United Nations system as a whole could respond more effectively to the plight of internally displaced persons. The

reply of Guatemala proposed the establishment of a United Nations Office for the Protection of Displaced Persons having both protection and assistance functions. A similar suggestion was made by representatives of the Sudan. In their view, the United Nations should establish an institution comparable to UNHCR for the protection of internally displaced persons. This position was subsequently confirmed in the meetings held by the Representative with the authorities during the visit to the Sudan.

104. China and WFP suggest that the mandate of UNHCR should be formally redefined to include the internally displaced. Among the elements stipulated by WFP are first, that displaced persons, refugees and returnees should be combined as one category of beneficiaries; second, that the United Nations human rights system should operate within the existing United Nations operational mechanism for emergencies where the most immediate effect on the welfare of the beneficiaries, including human rights, would be achieved; third, that UNHCR should be the lead agency for operations related to displaced persons as they are now for refugees; and fourth, that the Department of Humanitarian Affairs is the appropriate mechanism for emergency action, including displaced persons and refugees.

105. Because of the major gap in the existing mechanisms of the international community for the protection of the internally displaced, the appointment of a mandated person with close institutional connection with the Secretary-General and therefore the cooperation of the various organs of the Secretariat and the United Nations system has been uniformly well received. In his reply to the Representative, the Under-Secretary-General for Humanitarian Affairs called for close cooperation between his Department and the new mechanism on the internally displaced:

> "We welcome your appointment as the Representative of the Secretary-General on the human rights issues related to internally displaced persons. The conditions they face and their growing number require that their need for legal protection and humanitarian assistance be addressed comprehensively and effectively. In our efforts to coordinate and bring coherence to the response of the United Nations system to humanitarian emergencies, including natural disasters, the problem of addressing the needs of the internally displaced has been a particularly difficult one. We therefore see the need for, and are ready to assist in efforts to improve their legal, economic, and social situation.
>
> "I attach great importance to the work you have already initiated. It is timely and will, no doubt, assist the international community to act on the overall issue of displacement. The process so far has mostly been practice-oriented, but there is no doubt that the legal dimension is of great significance. The Commission on Human Rights should be encouraged to play a greater role in promoting and protecting the human rights of the displaced. I am confident that a coordinated approach towards the monitoring of human rights practices, with a closer link between the work of the Commission on Human Rights and the activities of my Department and the humanitarian bodies, could result in improved care

for, and protection of, the displaced populations. Indeed this will also assist this Department in carrying out the responsibilities entrusted to it by resolution 46/182."

106. Cooperation with both UNHCR and DHA is rendered the more vital by the fact that UNHCR has extended its protection mandate to the internally displaced only on an ad hoc basis, while DHA has no protection mandate on human rights matters. This clearly indicates a vacuum in terms of institutional policy formulation and operational activities concerning internally displaced persons for which a special mandate is needed. Indeed, both UNHCR and DHA believe that the Commission should play a greater role in providing protection for internally displaced persons.

B. Proposals for institutional arrangements

107. It would appear timely and appropriate to establish a focal point on displaced persons within the United Nations human rights system. Such focal point could take the form of reaffirming and expanding the mechanism of the Representative of the Secretary-General, or appointing a Special Rapporteur of the Commission or a Working Group composed of independent experts.

108. The Representative, Rapporteur or Working Group on internally displaced persons could be a focal point in a strategic process involving three sets of interconnected functions. One would comprise collecting information concerning displacement; investigating allegations; making contact with Governments and displaced populations and promoting dialogue and remedies; and reporting and maintaining liaison with other competent United Nations bodies. In contrast to existing thematic procedures, which focus primarily on individual cases, the work of the Representative, Rapporteur or Working Group would mainly concern situations involving groups of persons. While there may be inherent inconsistencies or conflict in the monitoring, fact-finding and mediation functions of the envisaged mechanism, aspects of these various roles would need to be played by the Representative, Rapporteur or Working Group, perhaps with the assistance of "independent" authorities with "delegated" fact-finding or monitoring functions to safeguard effective neutrality, objectivity or credibility with both parties.

109. It is essential that field missions be an integral part of the working methods, subject to the agreement of the States concerned. A significant part of this would be intercession on behalf of the internally displaced. This procedure has already been initiated, albeit to a limited degree, by the Representative of the Secretary-General, who visited since his appointment in July 1992 five countries in Africa, Europe and Latin America, all of which have or have had large numbers of internally displaced persons. His contacts with those Governments, as well as with United Nations agencies, foreign missions and non-governmental bodies in those countries, convinced him that such an approach is not only feasible, but could indeed be an effective way of achieving concrete results.

110. Once established, there are a number of measures which the Commission could take through the mechanism of the Representative, Rapporteur or Working Group, for example the stationing of regional or country human rights monitors in the field. In addition to providing information about the needs of those

internally displaced, monitors also can act as a deterrent to human rights abuse. The General Assembly, as well as the Commission on Human Rights, recently requested that the Secretary-General provide the Special Rapporteur on the situation of human rights in the former Yugoslavia with staff based in the territories of the former Yugoslavia and adequate to ensure effective continuous monitoring of the human rights situation there.

111. The proposed mechanism could present a comprehensive annual report to the Commission on Human Rights. In addition, it should provide reports when urgent situations arise, which could be considered by the Commission under its recently established emergency procedure. The extent to which access to relief assistance is being provided would be covered in the reports. As UNDP pointed out in its submission for the analytical report, the international community should be able to acknowledge that refusing available relief assistance to persons in need constitutes a fundamental human rights violation and that practical steps should be taken to include "the monitoring and acting upon such violations as part of the mainstream work of human rights groups, including the United Nations Commission on Human Rights."

112. The Representative, Rapporteur or Working Group should coordinate its activities with UNDP, DHA, UNHCR, WFP, WHO, IOM, ICRC and other agencies and organizations which provide relief and assistance to displaced persons in order to ensure complementarity in their respective efforts. While respecting the mandates and technical competence of such agencies, the Representative, Rapporteur or Working Group would also be able to help them ensure that human rights criteria are sufficiently understood and taken into account in the planning and execution of their activities in favour of displaced persons. In this regard, the Representative of the Secretary-General found that the experience of participating in the mission of the Special Rapporteur on the situation of human rights in the former Yugoslavia provided useful insight into the constructive and mutually supporting role a human rights mechanism can have in collaborating with other United Nations and international agencies and missions.

113. Strengthening collaboration of the proposed mechanism with the different country mechanisms can serve to increase Commission protection for the internally displaced. Since the reports on specific countries focus only on the countries concerned and, moreover, cover a broad range of human rights problems and cannot be expected to deal in detail with the protection needs of the internally displaced, country mechanisms can serve as complements to the proposed mechanism for the internally displaced.

114. Cooperation between the envisaged mechanism and human rights bodies at the regional level could contribute significantly to advancing protection for internally displaced persons. Significant among these organizations are the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights and the Conference on Security and Cooperation in Europe (CSCE). It is noteworthy that the Representative of the Secretary-General has already established contact with the African Commission through its Chairman and during his visit to the former Yugoslavia was able to cooperate with field representatives of the CSCE who also found the mission of the Special Rapporteur on the situation of human rights in the former Yugoslavia very useful for their purposes.

115. Critical to protection is the development of preventive strategies to deal with the human rights violations causing the massive uprooting of people. Some have suggested an annual review of human rights violations in specific countries and regions that give rise to mass exodus. Others have recommended that the Commission call upon the Secretary-General to establish direct contacts with Governments of countries from which mass exoduses may originate. This was actually proposed by the Commission in 1980 (resolution 30 (XXXVI)). Holding Governments responsible for mass exodus was also among the recommendations of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees which presented its final report to the General Assembly in 1986 (A/41/324, annex).

116. An effective early warning system will be needed to alert the international community to impending mass displacements. In this regard it should be noted that in April 1991 the Administrative Committee on Coordination (ACC) decided to set up an Ad Hoc Working Group on Early Warning regarding New Flows of Refugees and Displaced Persons with a view to developing an effective United Nations early warning system. In its report to the ACC, the Working Group recommended the establishment of a United Nations early warning system through a building process that would begin with the immediate creation of a United Nations inter-agency consultative mechanism.

117. The proposed consultative mechanism would entail each participating United Nations organization collecting and analysing relevant information in its area(s) of competence. They would send this information, together with possible recommendations for United Nations action, on a monthly basis to a focal point. A substantial part of this information collection and analysis could be done at the country level.

118. Regular monthly consultations among the participating organizations would be organized by the focal point to arrive at collective conclusions and recommendations for submission to the Secretary-General, the Under-Secretary-General for Humanitarian Affairs, and the heads of the participating United Nations organizations and agencies. Ad hoc special consultations could be arranged and alert bulletins created on an emergency basis as required.

119. The report of the Ad Hoc Working Group includes the Centre for Human Rights among the agencies or offices which should participate in the consultative mechanism. The Centre could certainly have a role in collecting human rights information and helping to identify situations leading to massive displacements. The Centre's capacity, however, is limited given the fact that it does not at present have field offices which could make assessments and provide rapid and reliable first-hand information in a systematic way. Nevertheless, through country missions by the Representative, Rapporteur or Working Group, and possible location of monitors at national or regional levels, developments liable to lead to massive population movements can sometimes be detected and brought to the attention of the international community, in particular the Commission on Human Rights.

120. For example, the reports of the Special Rapporteur on the situation of human rights in the former Yugoslavia have identified areas where massive human rights violations and displacements might occur. It would be useful if

all the thematic and country mechanisms could be tasked to identify situations of rapidly deteriorating human rights conditions that have the potential to produce massive displacements. When such situations are identified, the Commission could bring them to the attention of the Secretary-General for rapid international action.

121. The Commission could also consider how its own monitoring mechanisms could help assist appropriate operational bodies, such as UNHCR, ascertain when conditions are sufficiently safe to warrant the return home of internally displaced persons and refugees. It could explore whether a system of international monitoring could be created to report on returnees and seek to ensure that the right of return is exercised in safety. In the Sudan the Representative of the Secretary-General observed the difference between those able to return home to a situation of relative security and dignity and those suffering often degrading conditions in camps.

122. The Under-Secretary-General for Humanitarian Affairs, in his reply to the Representative of the Secretary-General, noted that "The work also need[s] to include the search for opportunities for displaced persons to return home and for reintegration into their own communities, as well as long-term socio-economic development strategies that would facilitate their resumption of a normal life in conditions of security and stability, either in their native land or in a third country." Interceding with the authorities and the donor community to facilitate the return of those among the displaced in the camps around Khartoum who wished to return to their areas of origin was one of the positive outcomes of the Representative's visit to the Sudan.

123. Since the human rights dimension of the displacement problem often intersects with the political and security problems of the countries concerned, the question arises whether the role of the Representative, Rapporteur or Working Group as envisaged in the original mandate and elaborated in this study will adequately meet the challenge or whether additional mechanisms within the Secretariat and the wider United Nations system will be required. As mentioned earlier, Guatemala and the Sudan suggested that the United Nations should aim at establishing a mechanism for internally displaced persons comparable to that accorded refugees through the Office of the United Nations High Commissioner for Refugees, especially considering that the number of displaced resulting from internal conflicts is greater than the dislocations in Europe following the Second World War that motivated the establishment of the regime for refugees.

124. Pending the resolution of this institutional issue, it would be useful for each of the major organs of the United Nations system whose mandate is relevant to the internally displaced, whether they be operational or standard setting in function, to consider establishing units within their system to focus on the problems of internally displaced persons.

125. In view of the monumental demands which a thematic mandate is bound to entail, in order for it to be effective in providing significant protection for the internally displaced populations around the world the Representative, Rapporteur or Working Group will need to rely very heavily on the assistance and support of the Centre for Human Rights, especially in the collection and processing of information on the conditions of the internally displaced. This

would require enhancing the present meagre resources of the Centre for this particular purpose, and would also allow the use of monitors in serious situations.

126. Within the envisaged institutional framework, the Representative, Rapporteur or Working Group would focus on the human rights dimension of the problem and act as a link and a catalyst among the various organs of the United Nations involved with policy formulation and operational programmes, reporting to the Commission on Human Rights, the Secretary-General and, through him, to the General Assembly and the Security Council, as necessary.

C. Concluding comments

127. There is at present no single organization within the United Nations system responsible for the protection and assistance of the internally displaced. Several organizations, most notably UNHCR, operationally manage programmes that reach internally displaced persons, but only in an ad hoc manner. Given the magnitude of the problem and the likely increase in the numbers of the internally displaced, the United Nations is called upon to create some mechanism, whether a Representative, Rapporteur or Working Group, that can serve as a focal point for international protection, help mobilize the efforts of existing United Nations bodies involved with assistance and protection, and can act to dialogue and advocate on behalf of internally displaced persons.

128. Because the needs and challenges associated with the internally displaced cut across so many operational and organizational lines within the United Nations system, such a mechanism, to be most effective, would benefit from an institutional association with the office of the Secretary-General.

129. If a Representative of the Secretary-General on internally displaced persons is mandated, the position would have two roles. The first would be to monitor conditions and alert the international community as necessary to initiate needed actions. The second is an operational role that would include interceding with States and other concerned parties to alleviate problems and assist in providing protection and assistance. As these two roles could conflict in specific situations, due regard would have to be given to insuring that neither is compromised, perhaps through the use of independent monitors by the Representative of the Secretary-General.

130. In the longer run, it would be desirable for the United Nations either to explicitly mandate UNHCR or set up an equivalent body to cater more specifically to the needs of internally displaced persons. Indeed, one of the subsidiary objectives of the Representative of the Secretary-General may well be to study the available options and to recommend action at an appropriate time.

131. Meanwhile, the crisis confronting the internally displaced cannot wait for the ultimate resolution of the institutional ambiguities. Practical normative and operational measures are urgently needed to alleviate the crisis. Even where existing international norms apply to internally displaced persons, enforcement is seriously lacking. The international community, once

informed of an impending or existing problem by the envisaged mechanism of the Representative of the Secretary-General, could use its full range of resources to extend protection and assistance to those in need.

V. DYNAMICS OF INTERNAL DISPLACEMENT

132. A crucial factor in understanding the problem of displacement is that most displaced persons are in and from developing countries with acute problems of nation-building: crises of national identity and unity, ineffective authority and control, limited capacity for economic productivity and resource distribution and, above all, tension between central political and economic forces and the demand for autonomy and equitable participation on the part of component constituencies. While international legal standards and enforcement mechanisms are critically important to remedying the gross violations of human rights that emanate from internal conflicts, appreciating the underlying causes of these conflicts is crucial, both to designing appropriate measures aimed at addressing the problems at their domestic roots and to initiating ameliorative actions before problems reach the crisis level.

133. When massive displacements of populations occur, the provision of emergency relief must be combined with measures to protect human rights and with longer-term strategies that address the underlying causes. Reconciling the external perspective of universal standards and the internal dynamics calls for widening the global consensus behind respect for human dignity on which the principles of protection for the internally displaced persons are ultimately founded. Unless the relativist perspective agrees with and reinforces universal standards, it cannot be sustainable in a world of increasing global consciousness and active concern.

A. Internal displacement in context

134. In order to appreciate the challenge facing the international community in confronting the increasing problems of the internally displaced, it is necessary to have a good understanding of the evolutionary process that has led to the current crisis of displacement and the foundation of the emerging global concern with the crisis. This process has occurred in three principal phases: the phase of the imperial and cold war domination from which self-liberation was the collective cause of the dominated; the independence period and the repressive impact of the cold war; and the post-cold-war challenges of the rising demand for democracy and the protection of fundamental human rights and humanitarian principles.

135. The starting-point in many of the affected countries has to be the colonial State and its unification of the diverse groups which it kept, paradoxically, separate and unintegrated. Ethnic groups were broken up and affiliated with others within the artificial borders of the new State system. While the colonial powers were the third-party moderators of ethnic coexistence and interaction, they imposed a superstructure of law and order that often was stratified on the bases of racial, ethnic, cultural and religious differences and inequities. Although the basic needs of survival were provided by the State, social, economic and political development were low on the priority list of the colonial State.

136. The independence movement reinforced the notion of unity within the framework of the newly established nation State. Independence came to most of these countries as a collective gain that did not initially disaggregate who was to get what from the legacy of centralized power and wealth. And indeed, colonial structures and processes of control had divested the local communities and ethnic groups of much of their indigenous autonomy and sustainable livelihood and replaced them with a degree of centralized authority and dependency on the State system.

137. In the countries of the former Soviet Union and Eastern Europe, comparable conditions prevailed in that a superstructure of authority and control maintained a system of law and order that suppressed the aspirations of nationalities, ethnic groups, and other identities. Although the basic material needs of the population were provided by the State, a massive violation or denial of fundamental political and civil rights eventually generated the democratic movement that contributed to the collapse of the system.

138. Once the control of these centralized institutions and sources of survival passed on to the nationalists, the inevitable outcome was conflict over power, wealth, and developmental opportunities. These conflicts often led to gross violations of human rights, denial of civil liberties and disruption of economic and social life, with consequential frustration of development and weakening of the national capacity to meet the basic needs of the masses of the population.

139. Given the cold war conditions that pervaded the international system, these global actors responded to their ideological or strategic considerations rather than the proper domestic context of competition for power and resources. The rival ideological camps often aggravated the conflicts by providing military and economic assistance to their allies or satellites and only rarely sponsored peaceful resolution efforts. The superstructures of the cold war, however, kept an effective lid on these internal boiling pots to maintain a notion of global order that was more interested in apparent or formal stability than in its substantive and qualitative content in terms of peace, democracy, prosperity, and respect for human dignity.

140. When the end of the cold war began to manifest itself, stimulated by and stimulating the democratization process in the Soviet Union and Eastern Europe, many saw a new and promising era emerge on the global scene. What many did not fully anticipate was that the bipolar confrontation of the cold war would be replaced by the disintegration of the Soviet Union; that Yugoslavia, which had stood as a model of unity in diversity, would fall apart; that ethnic tensions and conflicts would proliferate in many parts of the world.

141. While the end of the cold war has eliminated ideologically driven alliances that were insensitive to local demands for legitimacy, it also removed the "global arrangements" of the super-Powers as moderators and mutually neutralizing allies. The results have been unmitigated brutality and devastation in many parts of the world.

142. It can be credibly argued that these internal conflicts present an opportunity and a challenging paradox in that the ethnic pieces that were welded and kept together by the colonial glue, reinforced by the cold war order, are now pulling apart and reasserting their demands for equitable national unity and in some cases calling for autonomy or independence from the controls of centralized authority. Identities that were undermined and rendered dormant by the structures, values, and institutions of the nation State system are re-emerging and redefining the standards of participation, distribution, and legitimacy. New identity groups are also emerging, asserting themselves, and contesting the patterns of distribution of power, wealth, and other resources.

143. Two contradictory trends, toward enlarged unity and fragmentation, seem to be occurring concurrently: the tendency toward broadened regional arrangements in Europe, North America and other regions illustrates the first while the developments in the successor States of the Soviet Union, Yugoslavia, Czechoslovakia and Ethiopia, along with a host of other countries, dramatize the second. These two models suggest that those who have been oppressed by concentrated control are asserting the need for self-expression and recognition, while those already free are choosing to move pragmatically toward larger cooperative frameworks. The challenge then becomes one of balancing the rights of various groups, especially majorities and minorities. When the problems involved concern the suffering of the masses to the point of starvation to death and gross violations of fundamental human rights, to which the world community cannot close its eyes or conscience, the need for international action becomes imperative. The internally displaced are often among the most affected in those humanitarian tragedies.

144. These conflictual internal conditions did not adequately draw the attention of the peacemaking actors at the international level. Cold war global politics stifled international attention to the problems of human rights and created deadlocks in the major international organizations that largely prevented effective action on a cooperative basis.

145. Certain leaders in developing States used the existence of super-Power rivalry to gain access to military and economic resources that helped them remain in power. By siding with one or another power in the cold war competition, these leaders benefited from the bipolar international system, thereby allowing them to ignore the appeals of their own citizens for more attention to human rights and democracy. By involving themselves in the cold war global system, a number of authoritarian leaders received international support if not legitimacy. This pattern was particularly pronounced in areas deemed strategically important to one of the super-Powers. In regions of lesser importance to the United States or the Soviet Union, cold war competition had a lesser impact on indigenous political and social developments. Some leaders explicitly sought to avoid the entanglements of external competition and tried to remain non-aligned or to build organizations focused on the underdeveloped South.

146. The end of the cold war fortunately has opened up a new era for international protection of the internally displaced. The international community can now address internal conflicts on a cooperative basis and thereby help countries deal with the problems of displacement at their root

causes. In the case of developing countries, the emerging post-cold war international order has decidedly removed the external factor of super-Power rivalry and placed their problems in their regional and national contexts. Causes and effects are now increasingly recognized as primarily internal, a development which has both positive and negative implications, posing acute problems and challenging opportunities.

147. The positive is that attention is being appropriately focused on the internal challenges of nation-building: equitable national unity, sharing of political power, economic growth and patterns of distribution. The negative aspect is that unless the root causes of these internal conflicts and their consequences are preventively addressed, gross violations of human rights and indeed humanitarian disasters will continue to afflict large portions of humankind. It is important in this respect to realize that ethnicity often overlaps with class. After all, regional differences are a consequence of different rates of modernization or development and can become equivalent to ethnic class differences. All these factors should play a critical role in designing solutions to the problems of internal conflicts, including displacement induced by poverty and economic deprivation. It is this complexity and the socio-economic dynamics of internal displacement that make the required protection more than one of legal norms or prescriptions, even though legal standards provide important guiding principles.

148. The objectives for such international assistance and protection invoke two sets of principles: one is the immediate alleviation of the situation by providing emergency relief, protection and assistance for the affected communities or persons; the other is the establishment of structures and institutional arrangements for the long-term sustainability of a functioning system of protection that meets the minimum standards of human dignity prescribed by the international instruments.

149. International concern with humanitarian tragedies of the magnitude now being experienced by Somalia and the former Yugoslavia, to mention two among many, and the action needed to alleviate the suffering cannot end with the mere delivery of relief assistance. Ultimately, the range of international assistance may extend from short-term relief and protection to international help in reconstructing public order and civil society.

150. The operative principles in both phases must be equity, justice and human dignity, subsumed in the protection of fundamental human rights. The observance of these principles often requires a third party as mediator, moderator and peacemaker. Regional organizations have a vital role to play, although lack of resources and political will constrain their ability to act effectively. In certain situations of massive humanitarian crises, the ultimate authority with global legitimacy and responsibility is the United Nations. Such a role, aimed at establishing peace, justice, security and the protection of fundamental human rights, has a compelling and legitimate moral justification.

151. International concern with these fundamental human rights issues is in full accord with the cardinal principle of sovereignty. No Government can legitimately invoke sovereignty for the deliberate purpose of starving its population to death or otherwise denying them access to protection and

resources vital to their survival and well-being. The presumption that if a Government is incapable of providing protection and assistance then the international community should act, either on the invitation of the host country or with international consensus, to fill the vacuum is in consonance with the principle of sovereignty.

152. Changing patterns which favour international action are reflected in the recent approaches of the human rights policy-making bodies which have increasingly resorted to the appointment of special rapporteurs, working groups or representatives with mandates relating to sensitive and complex matters of human rights protection and assistance to persons in the domestic context. These procedures contrast very sharply with those followed by the United Nations in the past and signify considerable progress on behalf of universal humanitarian and human rights protection and assistance.

153. Judging from the evidence on the ground in the countries visited by the Representative of the Secretary-General, these new trends have significantly transmitted the message of global concern to the affected masses of the internally displaced. Their aspirations for international protection and assistance have been commensurately lifted. The sense of optimism and empowerment that is emerging with this lifting of aspirations and expectations is also fostering cooperative responsiveness on the part of Governments and other controlling authorities. The prospects of international cooperation, diplomatic persuasion, and, in exceptional circumstances, collective international action, all interplay to promote greater attention to the rights and needs of the affected population.

154. The increasing concern of the international community with the cause of the internally displaced persons should not, however, be exaggerated as having adequately met the challenge posed by the humanitarian and human rights agenda for their protection and assistance. Indeed, one of the major on-site observations of the Representative of the Secretary-General was the degree to which aspirations and expectations within the affected countries by far exceed the capacity of the United Nations bodies to deliver the protection and assistance which their visibility promises the needy. The challenge is, of course, not to diminish the visibility, but rather to enhance the capacity of the United Nations to deliver.

B. Observations from the field

155. Except for the case of the former Yugoslavia, where the Representative of the Secretary-General was part of the mission of the Special Rapporteur, Mr. Tadeusz Mazowiecki, the visits to a select number of countries, as has already been pointed out, were aimed not at monitoring and reporting on conditions of internal displacement and human rights violations in those countries, but were consultative missions aimed at demonstrating, at least symbolically, that the approach to the problem was not a global abstraction or a theoretical construct, but a practical one concretely reflecting conditions on the ground. Such an approach would allow the views and concerns of those directly involved to be given due consideration. Observations in the countries visited largely confirmed the main principles involved; at the same time, conditions within each country varied enough for the cases to demonstrate different aspects of the problems of internal displacement.

156. In nearly all cases, internal conflicts, breakdown in civil order, ethnic tensions and cleavages of various kinds were central themes in the causes of displacement or in the attitude of the authorities toward protection and assistance for the internally displaced, either by the Government or through international cooperation.

1. The former Yugoslavia

157. The situation in the former Yugoslavia has been adequately covered by the reports of the Special Rapporteur, Mr. Tadeusz Mazowiecki (E/CN.4/1992/S-1/9 and E/CN.4/1992/S-1/10). Mr. Mazowiecki, it will be recalled, was appointed on the basis of resolution 1992/S-1/1 which the Commission on Human Rights adopted at its first special session on 14 August 1992. The resolution states that the Commission was "appalled at the continuing reports of widespread, massive, and grave violations of human rights perpetrated within the territory of the former Yugoslavia, especially in Bosnia and Herzegovina". The Commission expressed its "particular abhorrence" at the concept and practice of "ethnic cleansing", carried out mostly by Serbs, which "at a minimum entails deportations and forcible removal or expulsion of persons from their homes in flagrant violation of their human rights, and which is aimed at the dislocation or destruction of ethnic, racial or religious groups." The Special Rapporteur was mandated "to investigate first hand the human rights situation in the territory of the former Yugoslavia, in particular within Bosnia and Herzegovina, and to receive relevant, credible information on the human rights situation there from Governments, individuals, intergovernmental and non-governmental organizations, on a continuing basis, and to avail himself or herself of the assistance of existing mechanisms of the Commission on Human Rights".

158. Following his first visit during the period 12-22 August 1992, the Special Rapporteur noted that "most of the territory of the former Yugoslavia, in particular Bosnia and Herzegovina, is at present the scene of massive and systematic violations of human rights, as well as grave violations of humanitarian law. Ethnic cleansing is the cause of most such violations" (E/CN.4/1992/S-1/9, para. 6). The report also states that "discrimination, harassment and maltreatment of ethnic Serbs are also serious and widespread problems in Croatia" (para. 26). While acknowledging that the Muslims have been accused of pursuing a deliberate policy of emptying the territory under their control of ethnic Serbs, the report concludes on the basis of information obtained as a result of the Special Rapporteur's visit to a Muslim-controlled area in Bosnia and Herzegovina (Bihac) that "no policy which could be compared with ethnic cleansing was being applied in this region" (para. 24).

159. On his second visit to the former Yugoslavia during the period 12-22 October, the Special Rapporteur invited the Representative of the Secretary-General on internally displaced persons, along with two thematic Special Rapporteurs, the Chairman of the Working Group on Arbitrary Detention and medical and forensic experts, to accompany and assist him on his mission. In the distribution of functions, and from Belgrade and Zagreb as bases, the Representative of the Secretary-General visited several areas on behalf of the Special Rapporteur, among them Batcovic and Bijelina in Bosnia and Backa Topola (near Sombor) and Subotica in Vojvodina. He also accompanied the

Special Rapporteur on his visits to Banja Luka, Trnopolje and Sarajevo in Bosnia and Herzegovina and, together with the other members of the delegation, visited Vukovar, a city in eastern Croatia "almost entirely destroyed" by shelling during the November 1991 attack on Croatia by the Yugoslav army (para. 19).

160. It is obvious from the foregoing that the objective of the Representative of the Secretary-General in visiting the former Yugoslavia differed from that of the other visits in that the former was part of a fact-finding and investigative mission while the latter were for consultations with Governments and other actors, on the initiative of the Commission and on behalf of the internally displaced.

161. The general findings of the mission are contained in the second report of the Special Rapporteur which stated, "Grave and massive violations of human rights continue to occur in the territory of the former Yugoslavia. The military conflict in Bosnia and Herzegovina, which is aimed at achieving 'ethnic cleansing', remains a matter of particular and most urgent concern" E/CN.4/1992/S-2/10, (para. 1). The report went on to say, "As a result of this mission the Special Rapporteur wishes to strongly emphasize that, since his first visit in August 1992, widespread and serious human rights violations continue to be committed in Bosnia and Herzegovina and in certain respects have intensified ... As a result of these violations a great number of people are suffering and have lost their lives. Thousands more find their lives threatened and their human dignity violated. Unless immediate action is taken, many of them will not survive the forthcoming winter. As indicated in the first report, the Muslim population are the principal victims and are virtually threatened with extermination" (para. 5).

162. During the visit, the Representative was able to observe the policy of "ethnic cleansing" carried out in those parts of Croatia and Bosnia and Herzegovina under the de facto control of Serbian authorities. Resolution 1992/S-2/1 adopted by the Commission on Human Rights at its second special session called upon States "to consider the extent to which the acts committed in Bosnia and Herzegovina and in Croatia constitute genocide, in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide". "Ethnic cleansing" is carried out by the ethnic group in control of a given territory against members of other ethnic groups, using a variety of methods. The aim appears to be forcing out the enemy group from the territory. The means used to instil terror among the population include extrajudicial execution; torture; rape; threats; harassment and intimidation; shooting or using explosives against homes, shops, and places of business; destruction of places of worship and places of cultural importance and forced relocation of populations. The ethnic Serbs in de facto control of certain areas of Bosnia and Herzegovina and in the United Nations Protected Areas are primarily responsible for the "ethnic cleansing" carried out there. As the Special Rapporteur noted in his first report, "Human rights violations are being perpetrated by all parties to the conflicts. There are also victims on all sides. However, the situation of the Muslim population is particularly tragic; they feel that they are threatened with extermination" (para. 52).

163. The Serbs do not of course see themselves as the main perpetrators of atrocities. Quite the contrary, in the discussions held with Serbian

refugees, they too alleged a litany of human rights abuses by the Muslims. But Serbian military authorities explained their violent behaviour as a reaction to the dismantling of their country by the international community which, they claimed, sought to foster an ethnically based concept of nationhood. Their bitterness against the dismemberment of their country and the sanctions imposed by the United Nations was extremely intense. Some of them ironically explained their war as a struggle for the survival of their Serbian identity and freedom from Muslim domination in Bosnia and Herzegovina.

164. The Representative of the Secretary-General had occasion to visit two detention centres or camps in the ethnic Serbian-controlled areas of Bosnia and Herzegovina, Batcovic and Trnopolje, which would substantiate the discriminatory attitude on the part of the Serbs toward the Muslims and other non-Serbs. The Batcovic detention camp, in north-eastern Bosnia, one of the areas the Representative of the Secretary-General visited on behalf of the Special Rapporteur, was said to be among the best in Bosnia and Herzegovina and indeed the detainees did not complain of ill-treatment. They had a clinic with a medical officer, looked mostly healthy and well-fed and, although some of them questioned their being forced to work in the agricultural fields, they seemed to accept the explanation of the authorities that their labour was needed and that it was good for them, since it killed time and gave them physical exercise which kept them fit. But they were appallingly crowded with about a thousand men (initially numbering 1,373) herded into two unheated "barns" or "stables", with blanket-covered hay to sleep on. It was already September, with winter fast approaching and no prospect of heating in sight. The de facto Serbian authorities asserted that the detainees had actually been or were about to become involved in combat when they were detained. However, all the detainees claimed to be civilians who had been rounded up and detained for unknown reasons.

165. In the "refugee" camp for Serbians at Backa Topola near Sombor, conditions contrasted sharply. The refugees were accommodated in an artists' "colony" where, in groups of several people, they slept in individual rooms on beds with mattresses and beddings and ate in a pleasant dining room with very good food prepared in a clean, well-kept, modern kitchen. Though their rooms were congested and they complained bitterly about the atrocities of the war and the brutal treatment they had received, their living conditions, though by no means normal, were relatively comfortable.

166. Conditions in the Trnopolje camp (which the Representative of the Secretary-General visited with the Special Rapporteur) were most "shocking", to paraphrase the language of the Special Rapporteur's second report (para. 10). More than 3,000 men, women, and children (Muslims and Croats hoping to flee "ethnic cleansing" by Serbs) were all packed into three buildings, which were unheated. The delegation arrived at the camp on a cold, rainy day, conditions which aggravated the hardships. The detainees all slept on blankets spread out on cement floors, had very little to eat and were subjected to harassment and violence. The Special Rapporteur wrote in his second report that he "was particularly shocked by the conditions in Trnopolje camp." The people

> "live in unspeakable squalor, sleeping on thin blankets and lice-infested straw, drinking contaminated water and surviving on minimum rations of

> bread. Some of these persons have remained in this camp for more than four months. The physician accompanying the Special Rapporteur stated that upper respiratory infection was spreading like wildfire. Children and adults were suffering from diarrhoea, presumably from contaminated water and a near-total absence of sanitation. There are diabetics without insulin, heart patients without digitalis and persons suffering from hypertension without medication." (para. 10)

167. Just as the conditions of the Muslim detainees at Batcovic had differed from those of the refugee centre at Backa Topola, so conditions at the Trnopolje camp contrasted with those of a Serbian-run centre in Banja Luka where Serbian "refugees", in fact displaced persons of Serbian origin, were accommodated, sleeping on beds with mattresses and linen, their dining room furnished with cloth-covered tables, served three meals a day, while their children, well fed and well dressed, attended school. The Serbian authorities had complained that international visitors were neglecting Serbian-run centres for refugees and displaced persons and had insisted on including that centre in the programme. The decision of the de facto Serbian authorities to show the centre, despite thereby exposing the huge disparity between living conditions at the two camps, was attributed by some observers to the divergent standards which the ethnic Serbs regard as appropriate for members of their own ethnic group on the one hand and Muslims on the other. The "refugees" or "displaced persons", in fact, complained bitterly about various forms of atrocities to which they had allegedly been subjected in their areas of origin.

168. In the town of Subotica in Vojvodina, the mayor and other leaders of non-Serbian minorities, Hungarians (some of whose leaders the Representative had met in Geneva), Croats, Ukrainians, and Slovaks gave detailed accounts of discriminatory policies by the Serbs, including in employment, especially in the police and administrative posts, and acts of intimidation aimed at forcing them to leave. They predict the development of communal violence and civil disorder.

169. It must always be remembered that behind the faceless statistics of the masses of people victimized by these tragedies are individuals. In Bijelina, a Muslim who had been displayed by the Serbs as a symbol of the inter-ethnic and interreligious solidarity of the community and who had publicly reaffirmed that view, revealed a totally different picture in a private and confidential interview. This witness described in detail the harassment, intimidation, and violence to which the Muslims were subjected and pleaded for help in returning home notwithstanding the dangers there.

170. Another witness, a Serbian, bragged about the fact that he was occupying the house of a Muslim living in Switzerland, who had allegedly entrusted him with the care of the house. He offered this as evidence of the solidarity between the Serbs and the Muslims in the area. But later he confessed under questioning that the Muslim owner of the house had fled the country, unwittingly revealing the popular Serbian tactic of intimidating home owners to vacate their houses which are then occupied by Serbs.

171. In the Trnopolje camp, a young woman stepped forward to report that she had been raped several times by Serbs. Rape was highlighted by many

witnesses, including by the leader of the Muslim community in Sarajevo, as a common offence against Muslims. Also in Trnopolje, an elderly mother, with the help of several people, struggled to contain her son, a young man who was experiencing an epileptic seizure. She explained that he had been under medication but was out of medicine.

172. The programme in Sarajevo comprised meetings with leaders of religious communities, Muslim, Catholic and Jewish, and with the Council of the Presidency. The leader of the Jewish community summarized the situation when he said to the delegation that no human principle was respected any longer in the conflict and that whatever help they needed was probably too late. Emphasizing the destruction of cultural monuments, he argued that when the conflict ended, Sarajevo would be a desert and that "those who would survive would be devoid of culture or human values, as people were dying in their souls." And yet, the last words in the meeting with members of the Presidency were "Please, please, help us."

173. What was particularly ironic was that religious differences were given an intrinsically ethnic significance that turned people of the same race and ethnicity into very different identity groups. Accounts of observers, including Serbs who did not identify with either side, indicated that people of mixed families were particularly vulnerable and in some instances traumatized by the schism. And there were some who still saw themselves as Yugoslavs and refused to be identified otherwise. The level of hatred and brutality underscored the cleavage which sharply divided people who until recently had been citizens of one State and who had offered pluralistic countries a model of diversified unity. Ethnic animosities have opened old wounds with a historical depth that has turned the model into a fiction, myth, or figment of imagination.

174. Desperate as people in the camps were, many of them saw in the mission of the Special Rapporteur and his accompanying delegation a symbol of hope to which they clung with gripping hands, sometimes with tears in their eyes. But some sat or lay in dispassionate or apathetic display of helplessness and hopelessness. Between those two perspectives lies the mystery of the prospects for their future.

2. The Russian Federation

175. Although there are said to be over 1 million displaced persons and some 400,000 thousand refugees in the Russian Federation, which poses serious challenges of protection and assistance to the authorities, what preoccupies officials the most are the even worse crises that are predicted in other States within the Federation and in other republics of the former Soviet Union that are now independent States. Ethnic divisions and rivalries which had long been suppressed by the Soviet empire have surfaced in both and hundreds of thousands of people have already been displaced.

176. In Armenia and Azerbaijan, fighting is raging and forcible relocations are taking place, causing substantial displacement. In the Russian Federation, ethnic Russians who settled in the Asian republics over the last century are suddenly finding themselves unwanted. Indeed, not since the

Stalin era, when millions of Soviet citizens were forcibly relocated, has the problem of displaced persons and "refugees" posed such a grave crisis in the region.

177. Throughout the former Soviet Union, struggles to hold on to power against increasing political opposition or to preserve territorial integrity in the face of separatist forces have resulted in armed conflicts that have deprived thousands of basic freedoms. While exact figures are difficult to come by, experts estimate that as many as 1 million people have been forced to migrate to and from outlying republics in recent years, primarily as a result of escalating ethnic conflicts. A 1992 study commissioned by the United States Agency for International Development (AID) estimated that Russia alone will receive 200,000 refugees and as many as 400,000 voluntary migrants will have left the central Asian republics and the Baltic States by the end of 1992. A Refugee Policy Group report estimates that as many as 300,000 people left the Asian republics of Kyrgyzstan, Tadjikistan, Turkmenistan and Uzbekistan in 1990.

178. Although there are differing categories of refugees and displaced persons whose reasons for migrating reflect the primary causes of their displacement, people who are forced to move as a result of nationality and ethnic tensions are often vulnerable to a host of human rights violations. Moreover, while ethnic tensions long prevailed in the USSR, the Union's dissolution exposed and made vulnerable the 65 million former Soviet citizens living outside their republic of origin. The largest number of them - 25 million - are ethnic Russians who potentially make up the largest group of displaced persons. Finding themselves aliens overnight and discriminated against in lands that they had been living in for generations has produced dangerous ethnic tensions, particularly in Moldova, the Baltic States and the Central Asian republics. At the same time, peoples in those republics often consider that Russians occupied superior positions and discriminated against their languages and culture in the past. Reverse discrimination appears to be their reaction under the new order of things.

179. Discussions with the Russian authorities on the problems of displaced persons and refugees were candid and substantive. As the Head of the Federal Migration Service put it, "There is nothing to hide". Relating the root causes of displacement and migration to inter-ethnic conflicts, especially in the late 1980s, a process she predicted would continue and intensify with forced migration perhaps stabilizing in 1994, she argued that the situation in Russia was more complex than anywhere else in the world, including the former Yugoslavia, because of the nature of relations with the former republics. She urged that the study undertaken by the Representative of the Secretary-General should be as frank and realistic as possible in addressing the problem. While agreeing with the main elements of the definition of the internally displaced, she distinguished between the international and the local purposes of the definition, stressing that in the Russian context, any displaced person with Russian nationality, which could be granted to any citizen of the former Soviet Union, would be regarded as internally displaced and not a refugee. She openly reflected on the extent to which sovereignty could be used to obscure State responsibility and stressed the need for the international community to stipulate standards that would specify the obligations of sovereignty. She welcomed the Commission's initiative on behalf of the

internally displaced and advocated the establishment of an ongoing mechanism on this matter. She also advocated unequivocally the principle of international action under certain conditions of State failure to meet its obligations toward its internally displaced masses.

180. The Chairman of the Sub-Committee for Refugee Affairs in the Supreme Soviet of the Russian Federation also gave an in-depth review of the history of displacement and forced migration, relating it to the original forced settlements of people outside their ethnic homelands which, combined with discriminatory practices, had fanned the ethnic tensions and animosities that eventually exploded into conflicts. The problem as he saw it was deeply rooted in political, economic and social factors. While acknowledging the role of religion, he saw it more as a factor which leaders tended to exploit for political gains rather than as a main factor in ethnic conflicts. He explained that there had been no conflicts prior to 1987 in the country, but that latent hostilities were deeply rooted in the discrimination against certain nationalities by the dominant nationality. He was explicit in blaming ethnic tensions and conflicts on the short-sightedness of the national leadership, whose pre-war repressions and the deportation of masses had planted the seeds of animosity and hatred. He attributed part of the responsibility to the Bolsheviks for partitioning the country into republics and segregating people among those republics. This was true not only of the Russians, but also of others such as the Georgians, the Central Asian Republics and the Baltics.

181. Contributing to the problems was the exploitation of the gains of the 1980s and the 1990s by certain political elements. With the relaxation of totalitarianism, the Government and other leaders sought to utilize inter-ethnic conflicts to increase their political influence. According to him, Western miscalculations in encouraging Mikhail Gorbachev to allow the disintegration of the Soviet Union also had an aggravating impact on the situation. By so doing, the West hoped to weaken the Soviet Union as a means of ending the cold war. While they succeeded in that objective, they created a new crisis, for instead of two rival super-Powers, many other forces had emerged which might not be easy to contain. And some of them possessed nuclear weapons.

182. A related, dangerous development, he argued, was that the Russian sense of pride had been severely hurt. Russians outside Russia regarded themselves as citizens of the Soviet empire, and their injured feelings of nationalism were being exploited by nationalist leaders who now hade a special appeal to many Russians. Political aspirations toward restructuring Russia along nationalist lines such as, for instance, forcing everyone to speak Russian throughout the Federation, were growing.

183. Focusing on the problems of the Russian minorities in the other republics, he urged the international community to impress upon the leaders of those republics that while their sovereignty was recognized and respected, sovereignty should not be allowed to compromise the human rights of the people. Mistreating the Russians in those republics might force them to return to Russia and be part of a political movement that could endanger the peace and stability not only of the region, but of the entire world. In his

view, there was need for exerting pressure on the new States to protect their minorities the mistreatment of whom could endanger the democratic process.

184. The perspective of the authorities from the Ministry of the Interior also combined a review of the historical background and the contemporary developments, supported by detailed statistical evidence of displacement and migration in various parts of the former Soviet Union, and the legislative and administrative efforts of the Government to assist the displaced and refugees. The role of UNHCR in this regard was highlighted. While the function of the Interior Ministry was presented as primarily one of ensuring civil order and security, the authorities displayed considerable interest in international arrangements for the protection and assistance of displaced persons and refugees, treating both as equally needy. Indeed, because of the complexities of the Russian situation, with people flowing in from other republics, the migrant population was perceived in ambivalent terms, sometimes described as internally displaced because they have Russian nationality and sometimes as refugees because they come from other republics. The representative of the Ministry of the Interior at one point remarked that there was no problem of internally displaced persons in Russia, but one of refugees.

185. The authorities in the Ministry of Foreign Affairs highlighted the new nature of the problem of internal displacement and welcomed the initiative of the Commission in mandating the Representative of the Secretary-General to conduct a study on the subject. They also welcomed the visit as providing an opportunity for an exchange of ideas. In their view, it was important for the international community to treat the matter in a forthright manner. In particular, they saw the need for a balance between international responsibility and sovereignty. The legal and institutional manner in which the balance might be established should be openly discussed and elaborated. As mentioned earlier, while they saw a convention as the long-term objective, they favoured the elaboration of a document of principles, a code of conduct or a declaration with clear mechanisms for implementation as the first steps to be considered by the Commission and the General Assembly. They expressed the view that international assistance and protection for the internally displaced should ideally be undertaken with the consent of the Government concerned but, if need be, by collective action.

186. Extensive discussions were also held with representatives of various groups at the Centre for Human Rights, some of whom were spokespersons for displaced persons and refugees. Laying emphasis on the human rights protection dimension, they argued that the Government's capacity to provide protection for the ethnic Russians in the republics was limited and that international cooperation in this area was urgently needed. They saw the problems of displaced persons and refugees as integral components of the problems of the society as a whole. The solutions to those problems should therefore be sought in the solution to the problems of the society. They saw such problems and solutions as primarily connected with economic factors. To approach the problems of the displaced persons and refugees as a global crisis which might manifest itself differently in different regions, they called for a series of hearings or conferences to be held on the matter at both regional and international levels.

187. As is apparent from the foregoing account, the Russian authorities were most concerned about the problems of refugees and internally displaced categories, which they used almost interchangeably according to need, and believe that they should be given the highest consideration not only by the Commission on Human Rights but also by the General Assembly. In this respect, they displayed a remarkable receptivity to international cooperation over the assistance and protection of the internally displaced, an attitude which contrasted sharply with the cold war attitude of the Soviet Union on such matters.

3. Somalia

188. Due to the developments in Mogadishu at the time of the visit to Somalia, which made UNOSOM close off the northern part of the city, the Representative of the Secretary-General was able to meet only with General Mohamed Farah Aideed, one of the factional leaders with the largest part of the city under his control. Ali Mahdi, the other of the two military leaders in Mogadishu, who generally was considered more cooperative with the international community, had his part of the city closed off by the UNOSOM, presumably for fear of attacks by Aideed's forces.

189. Somalia is by now a well-known case of a humanitarian and human rights tragedy which propelled the United Nations to adopt a series of resolutions and measures, culminating in Security Council resolution 794 (1992) of 3 December 1992 that authorized military intervention to bring emergency assistance to the starving Somali people and to help re-establish peace and public order in the country.

190. In the preambular paragraphs of the resolution, the Council recognizes the "unique character of the present situation in Somalia" and also recognizes "that the people of Somalia bear ultimate responsibility for the reconstruction of their country". The Security Council, "deeply disturbed by the magnitude of the human suffering" and "gravely alarmed by the deterioration of the humanitarian situation in Somalia and underlining the urgent need for the quick delivery of humanitarian assistance in the whole country", determined that the situation constituted a threat to international peace and security in the area. In particular, the Council expressed "grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities; deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of food and medical supplies essential for the survival of the civilian population." The Council, "dismayed by the continuation of conditions that impede the delivery of humanitarian supplies to destinations within Somalia, and in particular reports of looting of relief supplies destined for starving people, attacks on aircraft bringing in humanitarian relief supplies, and attacks on the Pakistani UNOSOM contingent in Mogadishu", expressed determination "to establish as soon as possible the necessary conditions on the delivery of humanitarian assistance wherever needed". The Council determined further "to restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation".

191. In the operative paragraphs, the Council reaffirmed its demand that all parties, movements, and factions immediately cease hostilities, maintain a cease-fire throughout the country and cooperate with the Representative of the Secretary-General in order to promote the process of relief distribution, reconciliation, and political settlement. The Council also demanded that all parties, movements, and factions in Somalia take all measures necessary to facilitate the efforts of the United Nations, its specialized agencies, and humanitarian organizations to provide urgent humanitarian assistance to the affected population. Strongly condemning all violations of international humanitarian law and demanding that all parties should immediately cease and desist from all breaches of the law, the Council endorsed the recommendation by the Secretary-General that action under Chapter VII of the Charter should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible. The Council welcomed the offer by Member States aimed at establishing such a secure environment.

192. It is particularly noteworthy that the African Group at the United Nations met and discussed the deteriorating situation in Somalia, as well as the request by the Secretary-General of the United Nations that the Organization mount a new military operation to bring an end to banditry, lawlessness, and facilitate the distribution of relief supplies to the people of Somalia (NY/OAU/AG/1/92). The African Group endorsed fully the request of the Secretary-General and supported his view that the situation in Somalia called for action under Chapter VII of the United Nations Charter. The Group commended the United States of America for its exemplary offer to place at the disposal of the United Nations a substantive force to help bring about much-needed relief to the suffering people of Somalia. As the United Nations stood ready to launch the new military operation, the African Group expressed its support and hoped that States unable to contribute troops would generously render logistical assistance to help make the operation a success. The Group expressed the view that this new resolve on the part of the United Nations to launch the operation was humanity's response to a situation of a tragedy that had to come to an end.

193. A feature of the Somali situation which, on the surface, challenges the thesis of ethnic, cultural, linguistic, or religious diversities and disparities behind the internal conflicts that generate refugees and displaced persons, is that the country has been considered one of the few homogeneous ones in Africa. A closer look at Somali society, however, reveals that diversity itself is a relative concept. The Somali social system falls into the category of what anthropologists term "acephalous" societies with a segmentary lineage system in which social order is maintained through a delicate balance of opposition between segments on the same level in the social structure.

194. Going up the ladder of the social strata, this pits clans and tribes against each other and, going down, places lineages, families and, indeed, individuals in mutual antagonism. While members of the family, lineage, clan, or tribe unite in solidarity against an external threat, even that is often undermined by internal rivalry and the need for external alliances. These socio-cultural factors explain in part why Somali society has been torn apart as various factions struggle for power following the 21-year dictatorship of Mohammed Siad Barre.

195. Siad Barre was a master at playing off the superpowers in their rivalry for third world allies, shifting positions between East and West, amassing arms from both, inciting a war with Ethiopia, keeping Kenya under constant apprehension in his drive for a "greater Somalia" which would extend into Kenyan territory, and maintaining a firm grip on his internal situation with all the ideologically justified support he received abroad.

196. When that external support began to dwindle and eventually diminished, with an accelerated threat to his own power from within, Siad Barre turned to the tactics and strategies of manipulating the clan system, using clans against clans, families against families and, ultimately, individuals against individuals, until the system totally collapsed in January 1991. By the time the regime of Siad Barre finally met its demise, several rebel groups had effectively gained control of different regions of the country. Somalia, as a unified nation, ceased to exist as various leaders of many factions manipulated clan identities in their struggle to gain control over as big a patch of the beleaguered country as possible.

197. Apart from the contradictions in the homogeneity and fragmentation of the society, another feature of the Somali situation that figured prominently during the visit of the Representative of the Secretary-General is the extent to which the factional leaders were divided on the role of the external actors. Ali Mahdi, one of the contending leaders, accepted the United Nations, and General Mohamed Farah Aideed, the most militarily powerful of the competing leaders, vehemently opposed any outside intervention. In his meeting with the Representative of the Secretary-General, General Aideed's comments almost exclusively focused on the bitter history of Siad Barre's dictatorship and his seemingly uncompromising opposition to international intervention. The fact that Aideed subsequently accepted United Nations intervention indicates that hostility to foreign involvement, pragmatism, and self-interest in accepting the inevitable played their respective roles. In an acutely divided country, there will always be elements favouring and others opposed to external intervention and positions will often change according to the dictates of the power equations.

198. Yet another phenomenon of the Somali situation which will have to be confronted is the challenge of addressing not only the symptoms, in this case mass starvation and displacement, but also the root causes of the crisis, namely, the breakdown of civil order and the underlying factors behind that breakdown. Restructuring society and restoring a self-sustaining social order are ultimately the only viable solutions to the Somali crisis. Once protection and assistance are achieved, United Nations efforts will have to focus on facilitating the reconstruction of civil society with institutions and guarantees created for the promotion of human rights.

199. In the meeting with General Aideed and his aides, they emphasized that assistance to the internally displaced should be aimed at helping the Somalis to resume a self-sustaining life. They saw the immediate challenge as one of saving lives by providing food, shelter, and other essential needs. That should soon be followed by moving people to settle on agriculturally productive land where they should be provided with other services such as education, health facilities, water supply, housing, agricultural tools and, for the coastal people, fishing materials.

200. The international community, they argued, should assist the people through their local authorities. Any area of potential activity should first be surveyed to identify the local controlling authority through whom assistance should be channelled. And for the purposes of restoring order, district and regional authorities could effectively be made use of. They even spoke of elements of the judicial system at the district and the regional levels which could be reactivated. Experts, including Somalis themselves, saw traditional leadership as valuable resources in the reconstruction.

201. A political, economic, and social system that autonomously uses local resources and resourcefulness can be designed to reconcile the lofty ideals of unity with the imperatives of segmentation and fragmentation in Somali society. As units of participation and social orientation, the family, the clan, and the tribe can indeed be complementary rather than antagonistic to the nation.

4. Sudan

202. The visit of the Representative of the Secretary-General to the Sudan was more complex than in the other countries, partly because of his own background as a Sudanese who has held public positions in his country and who has been intimately involved in the ongoing dialogue in the search for peace. As a result, the programme organized for him was, in comparison with those in the other countries, quite extensive and intensive. This accounts for the relative length of this section of the report and for the detailed analysis of the situation.

203. Over the last decade, Sudan has suffered major displacement problems as a result of both natural disaster and armed conflict. The drought of 1983-1985 in the western and eastern Sudan and the famine which resulted cost the country considerable loss of lives and triggered massive dislocation of populations in those regions. Although the Government of the time was initially reticent in inviting or welcoming international relief operations, diplomatic pressures eventually succeeded in reversing the situation and an unprecedented international emergency operation was undertaken which arrested the crisis.

204. Most of the displacement problems of the Sudan have been the result of the civil war that has raged since 1983 between successive Governments and the southern-based Sudan People's Liberation Movement and its Army (SPLM/SPLA). Some 5 million southern Sudanese have been uprooted, about 500,000 have been forced to seek refuge in neighbouring countries, some of them in Ethiopia from which they returned following the overthrow of the Government of Colonel Mengistu Haile Mariam, and some 3 million have moved to northern rural areas or to urban centres where they live in appalling conditions as squatters at the periphery. Most of the displaced remain in the South where they live under the hardship conditions of the war zone.

205. Three years after the international relief operations that alleviated the drought-induced famine in the North, the magnitude of the conflict in the South and its consequences for the population had reached unprecedented proportions: in 1988 alone, an estimated 250,000 people, almost all of them civilians, starved to death in the conflict-related famine. The international

community responded in 1989 by negotiating and launching a second massive assistance programme, known as Operation Lifeline Sudan, which involved Governments and non-governmental organizations coordinated by the United Nations and which has widely been credited with averting repetition of the 1988 tragedy. Lifeline has been renegotiated several times and has been widely acclaimed as a model of successful humanitarianism that has been emulated in other crisis situations.

206. This acclaim notwithstanding, the starving masses of southern Sudanese in the war zone, especially in the town of Juba, continue to fall between the cracks of the civil war, into a void of moral responsibility in which their only source of salvation is the compassion of the international community.

207. To appreciate the nature of the moral vacuum into which those fleeing, especially from the South, fall, it is essential to understand the nature of the conflict and the cleavages it has created. Sudan is certainly one of the most acutely divided countries in Africa with a combination of racial, ethnic, cultural, linguistic and religious factors contributing to "nationalistic" cleavages. Although there is a great deal of racial and ethnic overlap throughout the country, these factors create dichotomies, between the Arab Muslim North and the more indigenously African South, whose modern leadership is mostly Christian. As a result of these differences, compounded by disparities in the levels of political, economic, social and cultural development, the North being more advanced than the South, the Sudan has been plagued by war since 1955 at the dawn of independence. The conflict was halted by the military rule of then President Jaafar Mohamed Nimeiri, through the highly acclaimed Addis Ababa Agreement of 1972 which gave the South regional autonomy, but was resumed in 1983 with the unilateral abrogation of that agreement by President Nimeiri himself. Recently, the war has extended into parts of the North, where ethnic identities and socio-economic conditions are close to those prevailing in the South.

208. Religion, more specifically the role of shariah (Islamic law), in public affairs has recently emerged as a central factor in the conflict, a symbolic embodiment of much that divides. More pertinently, it is an issue which raises fundamental questions that affect perspectives on the problem of human rights violations.

209. Although the issue of the relationship between religion (specifically Islam) and the State has been debated in the Sudan since independence (President Nimeiri was the first to impose shariah by presidential decree), the present Government of Lieutenant General Omar Hassan al-Bashir, which seized power on 30 June 1989 in the name of the Revolution for National Salvation, has proved to be the most ideologically and unwaveringly committed to shariah and the establishment of an Islamic State. Since assuming power, ostensibly to save shariah from an impending compromise with the rebel movement, the Revolution has declared jihad (holy war) to mobilize the Muslim community against the SPLM/SPLA and has systematically moved to implement the Islamic agenda of the National Islamic Front, which has been the most vocal and best organized advocate of an Islamic State.

210. The Government is, however, confronted with serious challenges, not only in the South but also within the North, where the leadership of the ousted

political parties, military commanders, Muslim secularists and other factions have combined with the SPLM/SPLA to form what is known as the National Democratic Alliance (NDA) whose manifest target is the regime. The challenges confronting the Government from the NDA emanate not only from the regime's fundamentalist (or, as the Islamists prefer, "revivalist") character in a nation of religious diversity, but also from its military character and its opposition to the pluralism of party politics. The Government seeks to involve the population in decision-making, by utilizing both Islamic concepts and ideas generated from consultations within the system.

211. On the human rights front, the revivalist orientation of the regime entails potential or actual conflict between the relative and the universal nature of the standards on which international protection is founded. Relativism can be construed in two opposite ways. On the one hand, it can be argued that all cultures have their distinctive ways of promoting and protecting human dignity, and in that sense relativism reinforces the universal principles of human rights rather than conflicts with them. A different interpretation of relativism would uphold different standards for human rights in order to justify and defend local practices which may contradict the universal standards enshrined in international instruments. In discussions with Sudanese authorities, the argument was often made that the standards of human rights prescribed or postulated by the international community are Western oriented and do not necessarily reflect the values or aspirations of the Muslim community. This, combined with the determination of the regime to entrench itself and consolidate its Islamic agenda with the unwavering use of force, has placed the Sudan in the international limelight. This scrutiny is in turn perceived by the authorities as a Western campaign against the Islamic orientation of the regime rather than as a justified response to the human rights violations in the country.

212. The point has already been made and needs to be emphasized in this context that the objective of the visit to the Sudan, unlike that of the Special Rapporteur on the situation of human rights in the former Yugoslavia, whom the Representative of the Secretary-General accompanied on his second visit, was not to monitor human rights violations in the Sudan; quite the contrary, it was to consult with the Government on his mandate with a view to ensuring support for the Commission's initiative on behalf of the internally displaced population in the country. The issue of the Sudan's human rights profile in the international community was, however, a major concern of the Government and one which figured prominently in the discussions; indeed, the analytical report of the Secretary-General on internally displaced persons raised some of the issues involved in the debate over the human rights situation in the Sudan (paras. 43 and 66). Summarizing some of the pertinent findings of NGOs with particular reference to internally displaced persons in the Sudan, the analytical report makes reference to the alleged use of violence to force internally displaced people from the South and the West out of Khartoum in 1987, during the period of parliamentary democracy (para. 59).

213. An Africa Watch report entitled Sudan: Refugees in Their Own Country (1992) states that the Government bulldozed and burned the homes of about 500,000 persons in Khartoum, forcing them into displacement camps outside the city. Another Africa Watch report, Sudan: Eradicating the Nuba (1992), argues that government policy is to force the Nuba people to

relocate in southern Kordofan. Indeed, for the last several years, reports by Africa Watch and other human rights organizations have made repeated allegations of gross violations of human rights in the Sudan. Most recently, the execution of southern Sudanese for alleged collaboration with the SPLM/SPLA and who worked for the United States Agency for International Development in the southern town of Juba triggered a reaction, particularly in the United States, that ultimately culminated in a resolution by the United States Senate on 2 October 1992 condemning human rights violations in the Sudan.

214. On 18 December 1992 the United Nations General Assembly adopted resolution 47/142 on the situation in the Sudan. The Assembly resolution was being circulated and debated in draft form when the Representative of the Secretary-General visited the country. This in part explains why the visit was perceived by many both inside and outside the Sudan to be an investigative mission.

215. In the resolution that was finally adopted, the General Assembly expressed "its deep concern at the serious human rights violations in the Sudan, including summary executions, detentions without due process, forced displacement of persons and torture". It urged the Government "to respect fully human rights", and called upon all parties "to cooperate in order to ensure such respect". The Assembly also called on the Government "to comply with applicable international human rights instruments, in particular the International Covenants on Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination, to which the Sudan is a party, and to ensure that all individuals in its territory and subject to its jurisdiction, including members of all religious and ethnic groups, enjoy the rights recognized in those instruments".

216. Concerning the executed US/AID employees and the delivery of humanitarian assistance, the Assembly called on the Special Rapporteur on extrajudicial, summary or arbitrary executions "to address the killing of Sudanese nationals employees of foreign government relief organizations" and also called upon the Government "to ensure a full, thorough and prompt investigation of the killings by an independent judicial inquiry commission, to bring to justice those responsible and provide just compensations to the families of the victims".

217. On the issue of internal displacement, the Assembly, "alarmed by the large number of internally displaced persons and victims of discrimination in the Sudan, including members of minorities who have been forcibly displaced in violation of their human rights and who are in need of relief assistance and of protection" and "alarmed also by the mass exodus of refugees into neighbouring countries and conscious of the burden that this places on those countries", called on "all parties to permit international agencies, humanitarian organizations and donor Governments to deliver humanitarian assistance to the civilian population and to cooperate with the recent initiatives of the Department of Humanitarian Affairs". (The Under-Secretary-General for Humanitarian Affairs had just paid a visit to the Sudan and undertaken initiatives with the parties for the delivery of humanitarian assistance).

218. This was the international climate regarding the Sudan during the visit of the Representative of the Secretary-General. Because internally displaced persons were central to the mandate, the human rights debate surrounding the visit tended to focus on the forcible removal of southern squatters from the city to the desolate areas outside the capital, a measure that was widely perceived as an effort by the Government to rid the capital of people whose behaviour patterns deviated from the Islamic norms which the Islamic Revolution for National Salvation was trying to promote and inculcate among the Muslims. And indeed, the clash of values and practices was rendered more acute by the fact that many of the displaced women produced and traded in local brews as their main, if not only, source of income and livelihood, an occupation which violated one of the cardinal rules of shariah. Confrontation with the police on this issue has been a notorious feature of life for the displaced southern population in the city.

219. In preparing for the visit to the Sudan, the Representative requested to see the two camps for the displaced around Khartoum, Dar-es-Salaam (Land of Peace), west of Omdurman, and Jebel Awlia, on the White Nile, and to visit other centres in Kordofan, including Abyei on the North-South border where people fleeing from the war farther South and those returning from the North tended to converge and conglomerate. The Government responded positively to both requests.

220. It should be noted that in addition to the general objectives of the country visits already explained, the purpose of the visit of the Representative to the Sudan was to seek the support of the Sudanese Government for the United Nations initiative on the internally displaced, using two main arguments. First, as a country with a serious crisis of displacement, the Sudan needed to address this national tragedy and its human rights implications. It also needed international cooperation to assist in addressing the problems involved. Second, given its international profile on human rights, the Sudan stood to gain diplomatically from addressing the problems creating this profile and from supporting, and indeed championing, the initiatives of the Commission on Human Rights on the subject of internal displacement. The Sudanese delegation in Geneva had already advocated the need for the international community to develop instruments and mechanisms for the protection of the internally displaced that would be comparable to those developed for refugees after the Second World War. The Representative of the Secretary-General sought a reinforcement of that position by appealing to the Government for strong support in the pertinent forums of the United Nations system. These objectives provided the visit with a framework for constructive dialogue with the Government, which pledged support for the Commission's initiative and facilitated the visits to the camps and to Abyei. Indeed, the Representative's visit to the Sudan was widely covered by the local media which seemed to see it as an opportunity for countering the Sudan's negative international image as far as human rights were concerned.

221. The Representative of the Secretary-General was enthusiastically welcomed by the displaced population in both camps as a symbol of the international concern being shown for their plight. Sudanese officials who accompanied the Representative proudly displayed and explained the services which were being rendered to the displaced in such areas as maternity care, early childcare, immunization, feeding programmes for small children, general medical care,

education and food distribution. The dwellings, which were made by the displaced themselves from local materials, did not differ in any way from those often found in the shantytowns in which they had lived around Khartoum, although they were spread over larger stretches of that barren land than would have been possible inside the city. The accompanying officials defended the resettlement policy by pointing to the contrast between where the displaced now lived and what they described as the dehumanizing conditions in the squalid areas of the industrial periphery of Khartoum-North in which those in the camps had previously lived.

222. Conditions at the camps, however, revealed an unmistakable tension between the impressive array of the humanitarian services said to be provided and the obvious resentment of the people at the inherently degrading conditions of their displacement, far away from home and in relative isolation from the adjacent city. Behind the superficially happy faces of the demonstrators was a sense of rejection, uprootedness, alienation and anxiety, a suspension between despair and hope, all of which they communicated to the Representative of the Secretary-General by various means, both subtle and blatant.

223. The officials showed to the Representative of the Secretary-General the results of surveys which had been conducted at the camps to make the point that while most of the displaced had initially wanted to leave the camps and return to the South, the overwhelming majority had shifted in favour of remaining in the camps, an attitude the authorities welcomed as auguring well for national integration. The impression of the Representative of the Secretary-General, however, was that the majority of the people in the camps felt ambivalent and even resentful about their conditions; their fellow southerners sympathized with them.

224. The situation in Abyei, where the people were either indigenous or were close to their roots further South, contrasted sharply with the conditions in the camps around Khartoum. Although relief supplies had not arrived because the area is isolated from the rest of the country during the rainy season, people had managed to survive through their own resourcefulness by cultivating land within the constraints of the territorial restrictions imposed by the security situation, or by gathering wild food from their natural surroundings, despite the limitations of the war conditions. They were unequivocal in their welcome and in expressing appreciation to the Secretary-General of the United Nations for the concern demonstrated by the international community and to the Government for facilitating the visit of the Representative of the Secretary-General to their area.

225. The critical difference was not so much that the people in Abyei were better provided for, but rather that they enjoyed a minimum acceptable degree of security, dignity and autonomy, although many wondered how long those conditions would last in view of the conflict looming nearby. Abyei has indeed had a long history of being a link between the North and the South, often a bridge for peaceful interaction but sometimes a point of hostile confrontation. The area had been among the hardest hit by Arab tribal militias and the mass starvations of the late 1980s. Relations had, however,

improved significantly, as the neighbouring ethnic groups saw mutual advantage in resorting to their traditional tribal "diplomacy" and principles of good neighbourliness.

226. Several conclusions emerged from the two contrasting cases which were presented to the Government for policy considerations and were, on the whole, well received. First, whatever services were being rendered, the location of the displaced just outside the city, where they were neither part of the urban community nor in their own natural setting, was inherently degrading, especially as it was popularly believed that they had been removed in order to "clean" the city and rid it of undesirable non-Muslim elements. Secondly, the physical conditions of the displaced as reflected in their shanty dwellings did not adequately compensate for their removal from the city.

227. The alternative approach which recommended itself was that, in so far as possible, people should be given the choice either to go back to their areas of origin or to settlements closest to their natural setting, and accorded the protection and assistance necessary for them to resume normal and self-sustaining rural life. Alternatively, those who choose not to go back should be assisted to move freely into any area of the country, including urban centres, and given the necessary assistance to integrate themselves as ordinary citizens. The third alternative is that those who choose to remain in the camps should not only be given the services of the kind described to the Representative of the Secretary-General, but should also be assisted with materials to build for themselves more comfortable and healthier accommodations to help compensate for their isolation from urban conditions. Organizations which rendered services to the displaced had erected for themselves facilities that were quite attractive, even though they were inexpensively built from local materials. Extending that expertise to the displaced and helping them help themselves in that respect would seem a feasible and inexpensive way to achieve a humanitarian objective.

228. Several other improvements were suggested concerning the delivery of needed relief supplies to Abyei. A number of the governmental and non-governmental agencies that were represented in the visit to Abyei later met and pledged to increase their delivery of services to the area, including more agricultural equipment, medical supplies, food and other materials. The Foundation for Peace and Development, a government institution, requested international cooperation for the construction of an all-weather road to link Abyei with the town of Muglad to the north in order to break the isolation of the area during the rainy season and maintain a steady flow of supplies to the local inhabitants. The Foundation also appealed for international support to implement various projects to address the needs of the displaced, in particular for housing. A preliminary understanding was reached with the Foundation that, subject to further consultations and agreement with pertinent circles an international conference on the displaced in the Sudan be appropriately organized in cooperation with the United Nations and other international community agencies.

229. These views were later shared with representatives of the international donor community in Khartoum, who, while expressing scepticism based on past experience, welcomed the dialogue with the Government and expressed their desire to support some of the measures agreed upon, such as the voluntary or

free return of the displaced to their areas of origin and the organization of an international conference on the internally displaced, subject, of course, to the reaction of their capitals and the availability of resources.

230. The Representative of the Secretary-General also held a meeting with non-governmental organizations and, at its request, met separately with the Sudan Council of Churches to discuss the problems of the internally displaced and the services which were being extended to them. The Sudan Council of Churches, which had been involved in earlier projects for returnees, was expected to be among the NGOs which might apply for support to assist those wishing to return.

231. As a by-product of the visit, responsible authorities promised to take measures aimed at improving conditions for the displaced population around Khartoum and for the people of Abyei. Although the steps that were agreed upon were small in relation to the needs, the understanding reached with the authorities underscored the potential of a functional mandate that would intercede and enter into a dialogue on behalf of internally displaced persons, according to the circumstances. The fact that both the Under-Secretary-General for Humanitarian Affairs, who had also visited the Sudan, and his Deputy in Geneva, who was about to make a follow-up visit, were fully briefed on the results of the visit and undertook follow-up measures further underscores this potential. It is hoped that the Government will carry out needed measures to improve the situation of the displaced persons in accordance with the intentions stated during the discussions with the Representative.

232. An overarching reality of the situation in the Sudan, however, is that, both in substance and scope, the matters discussed by the Representative of the Secretary-General cover only minor aspects of a much larger crisis of displacement affecting millions of people in the war-ravaged zones, especially in the South. The quest for peace was nearly always spotlighted as the core issue and the underlying cause of displacement. One of the schoolchildren's songs at Dar-es-Salaam camp included the words "Give us Peace". Peace was underscored as the being real solution to the problems of displacement.

233. The options available to the parties appear to have crystallized, which should make it easier to negotiate a settlement. To achieve this, the Sudan will need a third party to facilitate a mutually acceptable compromise. At present, the Government appears to be torn between wanting a solution by the Sudanese themselves and needing third parties to break the impasse. The Government also appears poised between a genuine yearning for peace and an unwavering commitment to shariah. All the factions of the SPLM/SPLA seem equally committed to their objectives, and especially to a secular State. This combination makes compromise difficult, if not impossible. But the clarity of vision on both sides also makes the issues in the conflict quite obvious. How these positions can be reconciled is the challenge confronting the Sudan and all men and women of good will.

234. At the moment, each side seems to be striving to divide and weaken the other, both politically and militarily, with the Government driving a wedge between the factions of the SPLM/SPLA and the movement seeking advantage from alliance with the opposition groups in the North. The Representative of the

Secretary-General expressed the view to the Government and, in another context, to the leadership of the SPLM/SPLA that while these divisive manoeuvres may be beneficial for the short-term tactical purposes of the war, they cannot move the nation forward to peace and unity. In his view, internal unity in the North and in the South would be a first step towards reconciliation between the two regions and is therefore a prerequisite for the achievement of national peace and unity. What the Sudan needs is a statesmanlike vision with which all Sudanese could identify as a framework for just and equitable participation in public life.

235. Despite the recent victories of the Government forces on the battle front, it is widely recognized, even by the Government itself, that the issues involved cannot ultimately be resolved by war. Indeed, while the recent disunity in the SPLM/SPLA may weaken the movement, the cause of the South is too deeply rooted to be eradicated by force. The real danger now looming in the acephalous societies of southern Sudan, which, like Somali society, are structured on the basis of the segmentary lineage system with its potential for divisiveness, is that escalating fragmentation will degenerate to a degree that could ultimately prove very difficult, and extremely costly, to manage. Unless the Sudan can bring a speedy end to the conflict and reconstruct the country on the basis of an all-inclusive peace and respect for all racial, ethnic, cultural, linguistic and religious groups, the problem of the internally displaced and of human rights in general may prove daunting for the country and the international community.

5. El Salvador

236. El Salvador, the fifth country visited by the Representative, revealed a different model from the other countries: for the most part, it is a model of close cooperation with the international community, not only to achieve internal peace but also to consolidate that peace through a major restructuring of the internal situation to establish a functioning and self-sustaining democracy. The Peace Agreements of 16 January 1992, which ended 12 years of civil war and which were negotiated under the auspices of the United Nations, set out major reforms aimed at enabling the Farabundo Martí Liberation Front (FMLN) to participate in the political life of the country, transforming the institutions that had been responsible for major violations of human rights and achieving greater justice in the social and economic life of the country. If successfully implemented, these accords promise not only a higher standard of respect for human rights, but a major step forward in the rebuilding of El Salvador.

237. As causes of displacement were largely the result of the conflict, the Peace Agreements have considerably improved the human rights situation. In the meetings with NGOs in San Salvador and the rural populations in areas of Usulutan and Cuscatian, which were among the regions most affected by the war, the Representative of the Secretary-General heard expressions of deep appreciation for the protective role of the United Nations Observer Mission in El Salvador (ONUSAL) and the presence of UNHCR. Lengthy and eloquent accounts of the human rights conditions that had prevailed during the war were given to highlight the contrast with the situation following the Peace Agreements.

238. However, rumours to the effect that UNHCR and even ONUSAL would soon withdraw from El Salvador triggered apprehensions that hostilities could resume and that the brutalities of the war would recommence. Passionate pleas for the continued presence of the United Nations and international non-governmental organizations were reflected on banners, articulated by spokespersons, and even documented in written statements that were submitted to the Representative of the Secretary-General. In many respects, the sentiments expressed by the people had much in common with all those which the Representative had heard in the other countries he had visited.

239. More than anywhere else, however, the needy population of the rural areas of El Salvador saw the conflict and their plight not so much in ethnic terms, but more in terms of poverty. "Our crime was that we are poor", was the way one spokesperson explained the hardships the peasants had endured during the war. And indeed, conditions in the areas visited looked dismally poor by any standards. Among the urgent areas of concern for them was the very sensitive issue of land reform. Second was the problem of documentation resulting from the disappearance of identity papers during the war, especially as large numbers of the rural population had not only been uprooted, but had moved to neighbouring countries and had later returned to their villages, even as the war was still raging in the countryside.

240. Discussions with government leaders, including the Minister of Foreign Affairs, the Deputy Minister, and experts from other government institutions were very cordial and candid. While confirming the case of El Salvador as a model of international cooperation on a domestic problem, they saw the presence of ONUSAL, desirable and welcome as it was, as temporary and said that it should end as soon as circumstances permitted.

241. Government officials saw internal displacement as a temporary problem that was already on the decline. While it persisted, they questioned the disproportionate way assistance was being rendered to different communities, with some areas receiving massive aid and others totally neglected. The objective in their view should be to provide assistance to the needy on an equal basis.

242. To do that systematically, it was more constructive, in their view, to recognize, reinforce, and utilize government institutions instead of creating parallel non-governmental entities to compete in the distribution of services to the needy population. The Representative explained that as he understood it, the role of the NGOs was complementary to government efforts, especially in those areas where sections of the population were neglected, whether wilfully or due to lack of resources. NGOs, he argued, provided practical means of reaching the rural masses that sometimes fell outside the official reach. In that sense, they offered a channel for a more equitable distribution system. In fact, discussions with NGOs in San Salvador, some of whose representatives accompanied the Representative of the Secretary-General to the field, and the accounts of the peasants revealed that there was much mutual trust. The NGOs appeared to represent the interests of the rural poor.

243. In a sense, Government officials also appeared to address the issue from the popular perspective of poverty. The stress on the "class" aspect of the conflict in El Salvador offers a useful variation from the emphasis on

ethnicity as the principal factor in most internal conflicts. At least, it indicates that the issue may not be merely one of diversity in ethnic identity, but rather the implications of diversity on such other factors as participation and equitable distribution.

244. The El Salvadorian authorities, representatives of United Nations bodies and NGOs all lay emphasis on the model of CIREFCA as a comprehensive, integrated approach to the problems of refugees and displaced persons on the basis of need. It was explained that CIREFCA had initially been conceived as a programme for assisting the refugee population, but that it had proved exceedingly difficult to distinguish between refugees and those who were in need but could not qualify as refugees. The concept of the CIREFCA population was developed as a way of providing assistance to all who qualified on the basis of need and not by virtue of having crossed an international border. Indeed, the CIREFCA process was often cited in other discussions in El Salvador as a model of the right approach to the problems of displacement in the broader sense and within the framework of regional cooperation.

6. Cambodia

245. Among the various peace-keeping situations in which the United Nations is involved, perhaps the closest to the case of El Salvador is that of Cambodia. Although practical considerations prevented the Representative of the Secretary-General from visiting an Asian country, his attention was drawn to the comparison with the Cambodian case in a conference on the theme of Humanitarianism and War: Learning Lessons from Recent Armed Conflicts, held at Brown University, Providence, Rhode Island, United States of America, from 10-11 December 1992. As with El Salvador massive displacement both within and across the Cambodian borders occurred as a result of the prolonged war that was eventually brought to a negotiated settlement in Paris in 1991. This raised the issue of the dichotomy between refugees and internally displaced persons, with a consequential discrepancy in the ways in which they are perceived and treated by the international community, even when they face similar problems and sometimes in virtually the same circumstances.

246. In 1992, following the Paris Agreements, the international community launched a major effort to assist Cambodia to recover from a generation of warfare and social disruption. The United Nations Transitional Authority in Cambodia (UNTAC) received an ambitious mandate covering a wide spectrum of activities in the areas of peace-keeping, civil administration, human rights, and human needs.

247. Two of the major groups in need of assistance were Cambodians in camps along the Thai border, numbering some 360,000, and Cambodians who had been displaced within the country, but who had not crossed an international border, numbering some 180,000.

248. The focal point of international efforts were those outside the country who were the object of a UNHCR-led repatriation programme which, as of year's end, had facilitated the return of more than half of those along the border. People in this group received travel assistance and a modicum of protection and were given the choice of one of various options in resettlement aid.

249. The internally displaced, on the other hand, were not the beneficiaries of a similarly focused set of international programmes. To the extent that they were located in communities to which the refugees returned, they may have shared the benefits of some activities such as improvements in water supplies, schools and roads. That, however, was a function of their association with the returnees, not by virtue of their needs in their own right.

250. Ironically, the people who had lived in the border camps and who for a number of years had benefited from international programmes there, returned to many of the same areas and to communities in which the internally displaced were located. Upon returning, many had better levels of health and education than their new neighbours. Initially, resettlement activities simply continued the pattern of an international focus on refugees.

251. Realizing the disparities, UNTAC officials and associated NGOs soon sought to plan community-wide activities from which both groups of persons would benefit, regardless of their status. However, the distinctions have proved difficult to erase. Moreover, in the months ahead as the remainder of the group from outside returns, there was concern that the additional pressure they would exert on scarce land and social services might aggravate existing social tensions.

252. Many of those knowledgeable about the situation, whether aid officials or outside observers, noted that a more integrated institutional approach to human needs by the international community, without invidious distinctions between internal and external displacement, would have speeded the process of social and economic reconstruction in Cambodia.

253. It is precisely the discrepancy or disparity in the response of the international community to refugees and internally displaced persons in similar circumstances and with similar needs that in some of the responses to the Representative of the Secretary-General, notably from UNHCR, WHO and DHA, drew special attention as requiring remedy. The Cambodian case therefore illustrates what is often a pervasive problem along the borders of conflict-ridden countries.

C. Concluding comments

254. The foregoing accounts of developments in the countries which the Representative of the Secretary-General visited indicate that the international system is going through a significant transformation in two major respects. One is the emergence of human rights as a legitimate area of concern for the international community and a basis for scrutinizing the performance of Governments and other domestic actors. Another is the related concern of the international community with civil wars and other forms of domestic violence that inflict hardship and suffering on masses of people, among whom the internally displaced are often the most affected. Together, these two areas reveal early signs of a new world order in which human dignity for all people at all levels will become a matter of cooperative interest to the international community.

255. What makes this change particularly significant is that until fairly recently, the human rights field was considered so sensitive that it was

either ignored or treated gingerly as a subject of confidential communications with the Governments concerned. Complaints were received by the appropriate United Nations bodies and, if found to be admissible, transmitted to the Governments involved for comments. It was hoped that bringing the complaints to the attention of Governments and asking them to respond would raise their level of awareness and motivate them to remedy the situation in question. The actual behaviour of the Government was not monitored to ensure that the desired result was achieved.

256. The altered circumstances of the post-cold war era, as was observed earlier, have now opened doors onto internal conflict and enabled the international community to have a closer and more sympathetic look at the internal conditions and the needs of the large masses of the population. Along with the increased exposure of the internal dynamics to the outside world, a better understanding of these conditions has developed in the international community and with it a concomitant rise in the level of international concern about the conditions of the masses of people trapped and victimized by internal wars and the gross violations of human rights that often follow as a consequence.

257. In sharp contrast to the cold war response of the international system, the United Nations is now closely observing conditions in all the countries discussed above. In four of them, the United Nations has a presence on the ground that is directly related to the internal conflicts, whether to deliver assistance and help in peace-making, as is the case in the former Yugoslavia and Somalia, or to cooperate with the parties in peace-keeping and peace-building and in the promotion of human rights, as in El Salvador and Cambodia. As already indicated, the Russian Federation is interested in the United Nations assuming a greater role in the international efforts to provide protection and assistance for the internally displaced.

258. Of course, as was explained earlier, the removal of the centralized controls of the old order has in certain parts of the world resulted in upheavals that have created new problems for both peace and respect for human rights. Conditions in both the former Soviet Union and former Yugoslavia illustrate quite dramatically the consequences of the break-up of the centralized controls of authoritarian regimes and the transformation of the cold war international order. The "ripple effects" of this break-up have not by any means run their course and it is not yet clear what their consequences might be in terms of alternative arrangements. However, even these upheavals signify a process of liberation from repression and the challenge to the international community is to assist in the reconstruction of durable arrangements based on respect for fundamental rights. With no major strategic or ideological interests creating obstacles to international cooperation, the international community, and more specifically the United Nations, now can play a more assertive and constructive role in promoting peace and respect for human rights.

259. It was perhaps because of the potential role of the United Nations in providing assistance and fostering peace that the visit of the Representative of the Secretary-General was well received, not only by the affected populations, but also by the authorities. The mere fact that a personality representing the Secretary-General arrived in a remote village by plane,

helicopter or motor vehicle with United Nations identification was in itself a powerful symbolic demonstration of international concern which both the Government and the people took seriously. It signalled to both sides that the world is not indifferent but is indeed prepared to be of assistance, through international cooperation and collective action.

260. What all this means is that a new momentum for a global moral imperative is gathering and that world leaders are called upon to transcend national boundaries to meet their obligation towards humanity. The moral distinction which was implicit in the contrasting conditions of the camps for Serbs and those for Muslims or non-Serbs cannot be justified in a world that now claims a higher degree of sensitivity to the ideals of the Universal Declaration of Human Rights than ever before in its history. And if this call is directed to all those who see themselves in an international leadership role because of the global power and authority which they wield, it should obviously be associated with the role of the United Nations. As this role is redefined to meet the emerging global imperatives and challenges, the United Nations itself will need to be reinvigorated structurally and operationally to meet the challenge.

261. In nearly all the countries where internal conflicts are a major cause of mass dislocation and suffering, there is much which the international community, and more specifically the United Nations, can do not only to provide needed assistance and protection to the affected population, but also to help bring durable peace to the beleaguered countries. As has been repeatedly emphasized, the problem of the internally displaced is often an acute manifestation of an even more serious crisis which, unless resolved at the roots, threatens not only the peace and security of the country, but often also of the neighbouring countries, and ultimately the dignity of humanity. Nor does the international community have to wait until conditions have reached the level in Somalia and the former Yugoslavia in order to act decisively. Much by way of preventive action could be taken that could make international involvement far more cost effective than the massive intervention that crises always require in order to be effective in meeting not only the humanitarian objectives, but also the ultimate challenge of restoring lasting peace and security.

VI. CONCLUSIONS

262. Although the limelight of international attention is appropriately focused on the tragic situations in Somalia and the former Yugoslavia, gross violations of fundamental human rights and the humanitarian tragedies that often result from such violations are global crises that affect tens of millions of people within and across national borders. Most affected are the internally displaced, numbering some 24 million people, and almost certain to be on the increase with proliferating racial and ethnic violence that pervades all regions of the world.

263. While it is appropriate to focus attention on the extreme cases involving the collapse of civil order, the tragedies emanating from it and the humanitarian responsibilities of the international community to provide the needed protection and assistance and help restore a functioning system of political and civil order, attending to these worst-case scenarios must not

cloud the pervasiveness of the problem, the challenge it poses to the international community and the range of cooperative and diplomatic strategies available for dealing with the tragedies of displacement. To design measures appropriate to the conditions of individual cases, it is essential to view the problem in a conceptual framework that addresses both the general and the unique aspects of each case. Legal standards and mechanisms for implementation should be seen in the context of global political, economic, and social conditions which account for the extent to which the international system provides or denies protection and assistance to the needy masses of internally displaced persons.

A. Principles of protection

264. Existing human rights, humanitarian and refugee regimes clearly establish a basis for international concern with the problems faced by the internally displaced. In addition, the United Nations has responded recently to several crises involving internally displaced persons. But much of the United Nations action in this respect has been on an ad hoc basis and tends to emphasize the assistance dimension, with human rights protection as a subsidiary consideration. The international community is still in the process of formally recognizing the human rights dimension of the protection needs of internally displaced persons, and has not yet established a mechanism with specific responsibility for their protection. The appointment of the Representative of the Secretary-General was a significant first step, but much more needs to be done, both in formulating standards and designing enforcement mechanisms to provide adequate protection and assistance to internally displaced persons.

265. There are compelling reasons for designing principles and mechanisms that would act as preventive measures against the deterioration of conditions to the degree of civil disorder currently prevailing in Somalia and the former Yugoslavia. Prevailing conditions in those countries demonstrate that the international community is even less equipped to deal with extreme cases than it would be to provide a remedy in less acute circumstances, the obvious conclusion being that prevention is better than cure.

266. Whether the measures which need to be taken by the international community are persuasive or coercive, it is essential to clarify principles that justify international protection and the institutional arrangements and operational mechanisms for such involvement. Such a clarification would also play a preventive role as it would provide criteria for determining the degree of human rights violations that would trigger a collective response from the international community. The challenge posed by the problem of internal displacement involves principles of humanitarianism and human rights that are so fundamental that they do not represent political or ideological interests of individual countries or camps. In substantive terms, they often relate to the essentials of minimum standards of human existence and dignity - physical protection, shelter, food, clothing, basic health, and the integrity of the person and the family as the most fundamental social unit. National Governments and the international community are required by existing principles of international law to guarantee humane treatment and provide these basic necessities of life.

267. The responsibility for meeting these needs must first and foremost fall on national Governments. Where Governments are unable to provide adequate protection and assistance to internally displaced persons, they may call on the international community to assist. Where Governments lack the capacity to protect and assist their internally displaced populations and are unwilling to seek or accept international support, differences can in most cases be resolved through humanitarian diplomacy. It is only in the most extreme cases that the international community may be driven by compelling circumstances to enforce access and provide protection and assistance to the needy population.

268. Since such situations often involve devastating conflicts to which the Government is a party, both the inability and the unwillingness to assist the civilian population caught in the crossfire result in tragic consequences. Although violations of fundamental rights under those circumstances usually involve both parties to the conflict, more often than not severe human degradation and deprivation become inherent in the conflict. It is therefore extremely difficult, if not practically impossible, to isolate human rights and humanitarian issues from the security concerns of war and peace. It is equally unrealistic to draw a sharp dividing line between the protection aspect and the need for assistance.

269. Nevertheless, while peace is the ideal solution to war-related displacement, the observance of human rights and humanitarian principles, even under those trying circumstances, is an imperative, rendered even more critical by the violent conditions of armed conflict. The measures needed to meet the challenge are both normative and institutional.

270. With respect to legal norms and principles, there is a mid- to long-term need to fill gaps in the existing law. As an immediate measure, however, it is essential to compile and consolidate relevant international instruments and standards into comprehensive documents focused on the human rights and humanitarian problems of internal displacement. This would also lay the foundation for the longer term objectives. Among the envisaged documents would be a statement of guiding principles, a code of conduct, a declaration and, as an objective to be achieved through an evolutionary process, a convention.

271. While the compilation and consolidation of instruments, standards, and principles would help foster an appropriate legal climate for protecting and assisting displaced persons, it is widely recognized that the real issue in the final analysis is not so much deficiencies in the law as inadequacies of implementation procedures and a lack of political will on the part of both the perpetrators of violations and the international community. It is, therefore, important to establish a comprehensive mechanism in the international system that would address the composite problems of displaced persons, recognizing that the human rights aspect intersects with the humanitarian, the political and the economic dimensions. Although the causes of internal displacement vary, and in many cases Governments may be willing to provide assistance or to request the international community to cooperate in providing such assistance, displacement resulting from internal conflicts or civil war generates different and often conflicting perspectives on the problem and the needed remedies which require high-level diplomatic intercession and dialogue on behalf of the internally displaced.

272. The Secretary-General, in his annual report on the work of the organization (1992), says it is "timely" to devise a clear United Nations system-wide approach to the problem of internal displacement. While this study alludes to the larger picture, it focuses on the work of the Commission on Human Rights. The mechanisms currently available to the Commission for providing protection and assistance to the internally displaced are the special procedures involving working groups, rapporteurs and special representatives, both on thematic issues and on individual countries. Assigning the mandate on internally displaced persons to a Representative of the Secretary-General is widely perceived as an important first step in addressing the complex and delicate political, human rights and humanitarian issues connected with internal displacement and the need to utilize the collective institutional, human and material resources of the United Nations system.

273. The Commission is, however, called upon to make a formal decision on the issue of whether or not it should establish an ongoing mechanism for the protection of internally displaced persons and, if so, which form such a mechanism should take. The general consensus on the first question seems to be that there is indeed a need for a mechanism. On the second, views range from an open-minded advocacy of any one of the available mechanisms to assumptions that the form already decided upon by the Commission, namely Representative of the Secretary-General, should serve that purpose well.

274. More broadly, there is the question of whether or not to create a special United Nations agency for the internally displaced. Short of establishing a new operational body for the internally displaced, as proposed by Guatemala and the Sudan, the most logical step would be to explore redefining the mandates of UNHCR and DHA explicitly to cover the internally displaced population. That was indeed proposed by China and WFP. The other option is for all the United Nations agencies whose activities relate to the problems of the internally displaced to become even more attentive to their needs for assistance and protection. To the degree that the problem of internal displacement and the institutional framework for addressing it will require the cooperation of the entire United Nations system, many, including the United Nations High Commissioner for Refugees herself, believe that the mechanism of the Representative of the Secretary-General may perform an effective linkage and operational mobilization of the institutional network and of the capabilities of the various United Nations bodies. The Representative of the Secretary-General has already found that cooperation with the various bodies of the United Nations system and the personal working relationship with the Under-Secretary-General for Humanitarian Affairs and the Secretary-General himself have enriched and reinforced the mandate in very practical terms. This was also demonstrated by the reaction of the authorities and the displaced people in the countries which he visited. To a certain extent, therefore, the role of the Representative of the Secretary-General, should the Commission decide to follow the same mechanism, could help fill the existing gap within the Secretariat and the United Nations system with respect to the human rights protection needs of the internally displaced.

275. The Commission may also wish to request the Secretary-General to authorize the Representative to form a functional body or informal task force

or, at a minimum, to consult with representatives of the specialized agencies and United Nations organs in order to provide an ongoing overview of the work of the organization pertaining to the internally displaced, to detect any protection problems that might occur, and to seek ways and means of addressing them as appropriate under the circumstances.

276. To be comprehensively effective, a programme of protection and assistance to internally displaced persons will require further action on several fronts by the Commission and other pertinent bodies within the United Nations system. First, whichever of the mechanisms is adopted, should the Commission decide to establish one, its responsibilities will need to include monitoring with the view to detecting early signs of displacement. The mechanism would submit public reports to the Commission and through the Secretary-General to the General Assembly and, at times, the Security Council, which might ultimately resort to authorizing collective international actions. For that objective, other initiatives within the United Nations system may also be necessary to address and resolve a number of interactive issues.

B. Findings and recommendations

277. In order to spotlight and elucidate the main themes of this study and more specifically to relate them to the objectives of the mandate, it may be useful to summarize briefly the principal findings and recommendations, focusing on the purpose of the study, issues relating to the legal doctrine and mechanism for the protection of the internally displaced, and the strategy for putting them into operation.

1. Purpose of the study

278. The purpose of the study is to analyse and evaluate international legal instruments and mechanisms with a view to developing a strategy to deal with the problem of internally displaced persons. More specifically, resolution 1992/73 of the Commission on Human Rights mandated the Secretary-General, and therefore his Representative, to study existing laws and mechanisms and make recommendations on ways of strengthening them to be more effective in providing protection for the internally displaced.

279. The nature of the problem and the challenge it presents to the international community was articulated by the Under-Secretary-General for Human Rights in his letter conveying the appointment and the terms of the mandate to the designated Representative of the Secretary-General. "I am sure ... you will agree that protecting the human rights of displaced persons is one of the most critical challenges facing the international community today, affecting hundreds of thousands in Africa, Asia, Europe and Latin America", the Under-Secretary-General wrote. "It is a problem which has only recently begun to be addressed, and the study requested by the Commission on Human Rights can be expected to make an important contribution to determining the legal and policy approaches which will be adopted by the United Nations in this regard." These words were later reflected by the Representative of the Secretary-General in his letter requesting information from the sources stipulated in the resolution. From a statistical point of view, the magnitude of the crisis is greater than the figures quoted in the letter would suggest. Estimates now place internally displaced persons

worldwide at some 24 million and even that figure may already be outdated by recent developments throughout the world. From this mandate, there are two critical sets of issues involved: those relating to the legal doctrine and those pertaining to the mechanism of implementation.

2. Legal doctrine

280. With respect to the law, there is a difference of opinion between two sets of perspectives. One argues that the existing standards sufficiently cover the internally displaced and that the principal problem is lack of implementation. Another maintains that there are gaps that need to be filled in order to make the coverage complete and adequate. Both points of view emanate from the need to strengthen protection for the displaced. The first point of view favours building on what already exists. The second believes that setting new standards would not only fill existing gaps, but also focus international attention and thereby raise the level of public awareness of the problem and the need for remedies.

281. The study finds that in so far as the principles of the law are concerned, there indeed appears to be fairly adequate protection under human rights and humanitarian law. There are, however, obvious gaps in the existing law with respect to the specific needs of internally displaced persons. Just as added attention and protection are required for certain vulnerable groups, such as minorities, women, children, the disabled or refugees, a specific regime for protecting the internally displaced would serve as a useful focus on their special needs.

282. Combining the argument that there are gaps in the existing law with the chronic problem of insufficient implementation would tend to favour the development of a legal instrument specifically addressing the problem of internal displacement. Such an instrument could also serve as a means of focusing international attention on the crisis. But preparing such an instrument takes time and can only be conceived in a long-term perspective. Meanwhile, the compelling conditions and urgent needs of the internally displaced call for a speedy remedy.

283. The study recommends that while it might be useful to begin work on a legal instrument, it will be necessary to move ahead with other means of addressing the problems of internal displacement. What is envisaged in this transitional phase is an initial statement of principles which, though not legally binding, would focus international attention, raise the level of awareness, and stimulate practical measures of alleviating the crisis. It would also help to prepare the ground for a more legally binding document.

284. Several documents are envisaged in this transitional phase. One would be a compilation of rules and norms now existing in various forms and in a variety of legal instruments. Another would be in the form of a code of conduct comprising guiding principles to govern the treatment of internally displaced persons. The third would be the closest to an authoritative legal document and could take the form of a declaration. These documents need not be prepared in sequence; indeed, it might be advantageous to conduct work on them concurrently.

3. Institutional mechanism

285. There is at present no single organization within the United Nations system specifically mandated to assume responsibility for the protection of the internally displaced. Given the global magnitude of the problem and the urgent need for solutions, it has become imperative for the United Nations to explore ways to better assist and protect these internally displaced. One way would be to explicitly add internally displaced persons to the mandates of UNHCR or DHA, or an equivalent body might be established to cater to the needs of the internally displaced. Pending the resolution of this institutional issue, it would be useful for each of the major organs of the United Nations system whose mandate is relevant to the internally displaced to consider establishing units to focus on the problem. But protection still would need to be addressed by United Nations human rights bodies. An effective mechanism established by the Commission on Human Rights would serve the purpose by utilizing the existing institutional structures and the resources of the United Nations system.

286. The functions of such a mechanism may be classified into three principal sets of activities. One involves monitoring, gathering information, processing it, reporting to pertinent authorities within the system, and otherwise issuing alert bulletins that could act as an early warning of impending displacement crises and a call for action against occurring violations. The second comprises making contacts with Governments and other pertinent actors to play a more delicate diplomatic function of facilitating dialogue and otherwise seeking ways of ameliorating the suffering of the displaced masses. The third is the invocation of alternative enforcement mechanisms where intercession and dialogue fail to produce constructive results.

287. There is the question of which of the mechanisms now available to the Commission - Representative of the Secretary-General, Rapporteur or Working Group - would be more suited to the task of utilizing the potential of the United Nations system as a whole. Each of these mechanisms offers particular advantages, but perhaps a pivotal factor in selecting between them may be the need to liaise with other competent United Nations bodies, including the General Assembly and, ultimately, the Security Council, in which the good offices of the Secretary-General may be an added facility. If this suggests the mechanism of Representative of the Secretary-General, the broad rubric under which he or she would operate should allow flexibility to permit the creative use of information received through the parallel processes of monitoring, reporting, alerting and otherwise putting in motion early warning systems in order to reinforce diplomatic initiatives before any more drastic measures may be considered.

4. Operational strategy

288. The principles of the legal doctrine and institutional mechanism outlined above can be put into operation through a strategy involving three phases: the monitoring, reporting, and early warning phase; the phase of intercession, dialogue, and mediation; and the last phase consisting of the mobilization of eventual humanitarian collective action.

289. Phase one will aim at detecting and identifying the problem through various mechanisms for information collection, evaluation, and reporting. This phase should make use of the pertinent United Nations network, including the United Nations early warning system recommended by the ACC which aims at establishing a building process beginning with the creation of an inter-agency consultative mechanism. This United Nations early warning system would especially benefit from the reports of field representatives and other monitors of such operational bodies as UNHCR, UNDP, UNICEF and other intergovernmental and non-governmental bodies, including regional organizations such as OAU and OAS.

290. The result of collecting, analysing and reporting pertinent data would be to declare the existence of a problem, its magnitude or dimension and the need for some measures to be taken. This should invoke the mechanism envisaged for phase two, although by that time enough would already have been known about the situation to warrant the involvement of the Representative or alternative mechanisms of the Commission. This implies a certain amount of functional overlap between the monitoring, reporting and early warning phase and the role of the proposed Representative, Rapporteur, or Working Group. Through country missions, the Representative or the alternative entities could also detect developments which might lead to massive displacement and bring them to the attention of the international community.

291. The results of the Representative's discussions with the Government will determine whether or not action is needed. The Representative may become convinced, by the information available and the results of the analyses at phase one or by insights gained during an initial trip to the country concerned, that some sort of humanitarian action is urgently needed. Nevertheless, he/she might choose to continue with the dialogue in the country in question.

292. If the situation continues to threaten lives, the Representative will need to engage other bodies within the United Nations system and other actors in the effort, if necessary, through the good offices of the Secretary-General himself. In this context, the principles of the legal doctrine and especially the guiding principles envisioned in the code of conduct come into focus as the yardstick for determining the form of action required in the circumstances. As already indicated, the clarification of those principles could be an important aspect of prevention. The expectation that if specified standards are not met, certain consequences will follow, can be an effective deterrent.

C. Concluding comments

293. What is outlined in this study is a framework for dealing with the grave problem of internal displacement with a focus on the concerns of the Commission on Human Rights. For the international community to develop an adequate response to this global crisis, a great deal more will have to be done with respect to the legal instruments and, in particular, enforcement mechanisms. Equally important is the realization that internal displacement, acute and critical as it is, constitutes an aspect of a larger problem of civil wars and domestic violence which will have to be addressed if a comprehensive and lasting solution is to be found. Consequently, the

mechanisms and procedures envisaged for enhancing protection and assistance to the internally displaced will have to be strategically connected and coordinated with other pertinent institutions, mechanisms and procedures for peace-making, peace-keeping and peace-building.

294. With United Nations bodies pragmatically mobilized and coordinated to provide effective protection and assistance, with monitoring and early warning systems in place for the detection of impending or prevailing crises of displacement, with procedures under way for the consolidation of existing international instruments into a code, a declaration, or a convention, with organizational arrangements made to cater both to protection and assistance and with diplomatic initiatives taken as appropriate to avert, alleviate, or correct humanitarian tragedies or human rights violations, there should develop within the United Nations system and in the international community a more favourable climate for policy-making, an institutional framework and an operational network that should be effective in elevating and promoting the rights of the internally displaced persons to an acceptable standard of human dignity.
